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VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 187

CALIFORNIA, PETITIONER,

vs.

FEDERAL POWER COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 28, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,687

PEOPLE OF THE STATE OF CALIFORNIA, *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

EL PASO NATURAL GAS COMPANY, *Intervenor*

On Petition to Review an Order of the Federal Power Commission

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JOINT APPENDIX

Volume III

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(App. Page 1071 to App. Page 1368)

12736

PLEADINGS

Received Aug. 7, 1957

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION
WASHINGTON, D. C.

100-2 Formal

DOCKET NO. G13018

In the Matter
of
PACIFIC NORTHWEST PIPELINE CORPORATION

Application Pursuant to Section 7(b) of the Natural Gas Act for Permission to Abandon Facilities and Services

Pacific Northwest Pipeline Corporation (hereinafter referred to as "Pacific") by its attorneys applies, pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon all of its certificated natural gas pipeline facilities and the service rendered thereby so that these facilities may be acquired and operated and the service rendered by El Paso Natural Gas Company (hereinafter referred to as "El Paso"), as El Paso proposes to do if a certificate of public convenience and necessity is issued to it as prayed for in El Paso's companion application filed contemporaneously herewith. This application is accordingly conditioned upon the approval of the El Paso application and the consummation of the plan of acquisition set forth therein.

1. Applicant and Its Representatives in These Proceedings

Applicant's name is Pacific Northwest Pipeline Corporation. It is a corporation organized and existing under

the laws of the State of Delaware. Its principal place of business is in Salt Lake City, Utah. The names, titles and post-office addresses of the persons to whom correspondence or communications respecting this application are to be addressed are:

Stuart F. Silloway, President,
Pacific Northwest Pipeline Corporation,
P. O. Box 1526,
Salt Lake City, Utah.

Allen B. Hiatt, Vice President,
Pacific Northwest Pipeline Corporation,
P. O. Box 1526
Salt Lake City, Utah.

Leon M. Payne, Esq., Attorney,
Andrews, Kurth, Campbell & Bradley,
2200 Gulf Building,
Houston 2, Texas.

Charles E. McGee, Esq., Attorney,
Associations Building,
1745 — 19th Street, N. W.,
Washington 15, D. C.

2. The Authority Sought by Pacific

By this application Pacific seeks permission and approval, pursuant to Section 7(b) of the Natural Gas Act to abandon its natural gas pipeline facilities as presently constituted and as they may be enlarged or extended prior to the date of the proposed acquisition, and to abandon all services rendered by means of such facilities in favor of the acquisition and operation thereof by El Paso, as requested in its companion application hereto, conditioned, however, upon the granting by the Commission

of El Paso's application, and further conditioned upon the consummation of the merger proposed in that application. No other application to supplement or effectuate Pacific's request to abandon its facilities in favor of El Paso need be made to any other Federal, State or other regulatory body.

3. Prior Applications of Pacific for Certificates of Public Convenience and Necessity; Facilities to be Abandoned

The principal applications which Pacific has previously filed with the Commission for certificates of public convenience and necessity are attached hereto, marked Exhibit X, and made a part hereof as if fully

herein set forth. A full and complete description of the facilities of Pacific which it seeks permission to abandon by this application, are attached hereto, marked Exhibit X-1, and are made a part hereof as if fully herein set forth.

Attached and made a part of this application as Exhibit K, is a schedule which shows the original and depreciated cost, as of May 31, 1957, of Pacific's facilities then in being, and an estimate of the cost of the remaining facilities which Pacific proposes to construct under appropriate authorizations.

4. Business of Pacific

Pacific is a natural gas company within the meaning of the Natural Gas Act. It is engaged in the production, purchase, transportation and sale in both interstate and intrastate commerce of natural gas. It has constructed, owns and operates a natural gas transmission system consisting of approximately 2125 miles of main and lateral pipelines extending in a general northwesterly direction from the San Juan Basin in New Mexico through the States

of Colorado, Utah, Wyoming, Idaho, Oregon and Washington to a terminus at the international boundary between the United States and Canada. Pacific sells natural gas for resale in the States of Washington, Oregon, Idaho, Wyoming, Utah and Colorado and also sells directly to certain industrial customers located along the route of its pipeline. Pacific placed its initial facilities in operation on January 1, 1957. Pacific produces and purchases natural gas in the San Juan Basin in Northwestern New Mexico and Southwestern Colorado and purchases gas in the States of Colorado, Utah and Wyoming. It has contracted to purchase a substantial quantity of natural gas from Canada.

Pacific also sells natural gas to the Colorado Interstate Gas Company and to the Mountain Fuel Supply Company for resale in the States of Colorado, Wyoming and Utah.

In general, Pacific's market area is the Pacific Northwest region of the United States. By means of its main and lateral pipelines and connections thereto, it possesses access to large proven and potential gas reserves in Western Canada and in the Rocky Mountain States.

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5. Description of El Paso

In its companion application hereto, El Paso has applied for a certificate of public convenience and necessity authorizing it to acquire and to operate all of the facilities which Pacific herein seeks permission to abandon.

El Paso is a natural gas company within the meaning of the Natural Gas Act. Its principal business is the ownership and operation of natural gas pipeline transmission facilities consisting of approximately 6700 miles of main and lateral pipelines. It is engaged in the production, acquisition by purchase, processing, transportation and marketing of natural gas. El Paso delivers and sells at wholesale natural gas to customers in West Texas, Southern

and Northwestern New Mexico, Arizona and to distribution companies at the Arizona-California boundary which transport the gas so sold and delivered through their distribution systems to consumers in California and Nevada.

El Paso produces and purchases natural gas from oil and gas fields in the Permian Basin in Southeastern New Mexico and adjacent areas in West Texas, in the Panhandle Field in Northwest Texas, and in the San Juan Basin in Northwestern New Mexico and Southwestern Colorado.

For a fuller description of El Paso's facilities and operations reference is hereby made to the description thereof contained in El Paso's campanion application hereto.

El Paso, under appropriate orders of this Commission has been certificated to transport approximately 2,488,000,000 cubic feet of natural gas per day through its main line transmission facilities to its customers in West Texas, New Mexico, Arizona and California. In response to its customers' demands for additional gas El Paso has two applications pending before this Commission for the delivery and sale of an additional 285,000,000 cubic feet of natural gas per day. Further demands will require El Paso in the near future to request authority to transport and deliver a further 500,000,000 cubic feet of natural gas per day. Of the gas now marketed by El Paso approximately 1½ billion cubic feet thereof is residue gas.

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The marketing of this vast quantity of residue gas has confronted El Paso with problems which require for their solution an assured access to and acquisition of large quantities of dry gas available in Western Canada and in the Rocky Mountain area. Since Pacific's facilities provide the only available means, short of a duplicating line, of access to the proven and potential sources of dry gas in Western Canada and the Rocky Mountain Region, El Paso

by its companion application proposes to acquire and operate the Pacific system.

Included with and made a part of this application as Exhibit F are geographic maps of suitable scale and detail showing and appropriately differentiating between all of the facilities now owned and operated by El Paso, and the facilities of Pacific which El Paso will acquire and operate if El Paso's companion application is granted.

All the exhibits which are set forth in the Table of Contents Listing Exhibits at the end of this application are made a part hereof and are filed in conformity with the Commission's Regulations under the Natural Gas Act. These exhibits together with those attached to El Paso's companion application are for the purpose of showing fully the effect of the acquisition and operation of Pacific's facilities by El Paso, and to demonstrate that the present and future public convenience and necessity will be served by the acquisition and operation of Pacific's facilities by El Paso.

6. The Plan of Acquisition: the Proposed Merger of Pacific into El Paso

El Paso proposes to acquire the certificated facilities of Pacific by merging Pacific into El Paso pursuant to Section 253 of the Delaware General Corporation Law.

El Paso presently owns 2,986,802 shares of the common stock of Pacific. This represents 99.8% of the outstanding common stock of that company. The proposed merger by which El Paso will acquire title to all of Pacific's facilities and assets is to be accomplished by filing with the Secretary of State of Delaware a "Certificate of Ownership and Merger, Merging Pacific Northwest Pipeline Corporation into El Paso Natural Gas Company" as authorized by Section 253 of the Delaware General Corporation Law. In connection with such merger El Paso will assume all the corporate debts and liabilities

of Pacific. It will cancel all intercorporate debts, including a substantial indebtedness of Pacific to El Paso. Outstanding common stock of Pacific not owned by El Paso will be acquired by exchanging 14 shares of El Paso's common "B" stock for each 8 shares of Pacific common stock. El Paso will then cancel all of its Pacific stock. Prior to the effective date of the merger, Pacific will call for redemption and thereafter cancel all its outstanding preferred stock. A loan for this purpose will be made by El Paso to Pacific. The funds for this purpose will be raised by El Paso either by the sale of second preferred stock or by a bank loan. If this Commission authorizes the proposed merger, all required consents of bondholders of both companies will be obtained prior to the date of merger.

If authorized by this Commission, Pacific proposes to cease the operation of and abandon all its certificated facilities and services in favor of El Paso. If certificated by this Commission, El Paso will render any and all services now rendered or contemplated by Pacific through the use of said facilities.

If this application is granted and the proposed merger is consummated, El Paso, succeeding to all rights, obligations, franchises and privileges of Pacific, will abide by all lawful orders of this Commission. It will supply all customers presently supplied by Pacific and such other additional customers located contiguous to Pacific's pipeline system which this Commission may from time to time authorize to be served.

The only expenses to Pacific, resulting from this proposed merger, in addition to those hereinbefore stated, will be legal expenses and those ordinarily incident to the presentation of an application before this Commission.

7. El Paso's Ability and Willingness to Operate Pacific's Facilities

El Paso is able and willing to do properly the acts and to perform efficiently the services contemplated by this application and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder. El Paso has trained personnel possessing long experience who are thoroughly familiar with the territory traversed by the pipeline systems of both companies and

who are thoroughly cognizant of the operating problems of each company. This experience can be utilized to the fullest extent in the operation of a consolidated and unified system. El Paso is otherwise fully qualified and financially able to operate a single and unified system comprising both its facilities and those of Pacific. Pacific's facilities are so located that they can be economically and efficiently operated by El Paso. No curtailment or impairment of service to any Pacific customer will result. To the contrary, as hereinafter set forth, the acquisition and operation of Pacific's facilities by El Paso by means of the contemplated merger will effect efficiencies, economies and flexibilities in operations to the benefit of the customers of both El Paso and Pacific.

8. Grounds of Public Convenience and Necessity

Pacific represents that the abandonment of its certificated facilities and the service rendered thereby, as requested in this application, and the acquisition and operation thereof by El Paso, as requested in El Paso's companion application, are and will be required by present and future public convenience and necessity. The acquisition would permit the consumers of natural gas of both El Paso and Pacific

to be served by a single integrated company under the jurisdiction of this Commission which, exercising its authority under the Natural Gas Act, will regulate such a consolidated company in the overall public interest with due consideration to the efficient utilization of natural resources and their economical supply to consumers, thereby affording the public the following express advantages:

(a) Every customer of each separate company has an interest in seeing that his supplier is backed by the most comprehensive gas reserves possible in order that he may be assured of long continued economical gas service. All gas reserves found anywhere on both systems or reasonably accessible thereto will become available to all customers of both systems. The life index of such reserves will be materially increased thus assuring all customers sufficient gas sources to meet their present and future demands and providing for more efficient utilization of natural resources. Sources of gas will be available at each end of an integrated pipeline and along its route, thus

permitting gas to be readily delivered for peak demands and employing the invested capital in existing facilities to its fullest extent. Large or small quantities may be more economically transported with resulting lower cost to the consumer.

(b) Although the marketing by El Paso of large quantities of residue gas has served a valuable economic function in the prevention of waste, it has created deliverability problems for El Paso which can only be solved by the addition of large volumes of dry gas to the reserves available to El Paso. In this way El Paso may make more adequate provision, now and in the future, against the deficiencies and irregularities in the supply of residue gas. The availability of residue gas is subject to oil production

schedules rather than to the need of the gas consumer. It is more readily available in summer and in the early days of the month. Such availability bears no relationship to the seasonal or peak demand of the gas user.

Access to and acquisition of such dry gas is required to meet the seasonal and peak demands on the El Paso system. Hence, to balance the use of residue gas, El Paso requires the access to the proven and potential reserves of dry gas in Canada and the Rocky Mountain area which may be obtained by the acquisition of Pacific's facilities. It is in the public interest that residue gas be economically utilized.

(c) The demands of the California and other southwestern markets can be most economically and efficiently met through the integration of the facilities and reserves of El Paso and Pacific.

The growing markets in California and at other points on the El Paso system are making extensive demands upon the company for additional gas. There are now pending before this Commission applications by El Paso to deliver an additional 285,000,000 cubic feet of gas per day. To meet the further demands of its customers, El Paso is now planning a further delivery of an additional 500,000,000 cubic feet of gas per day. This latter gas must come largely from the reserves in Canada and the Rocky Mountain States.

Canadian and Rocky Mountain gas can be marketed to California and other southwestern points more economically by the acquisition of Pacific's facilities than by any other means. Duplication of facili-

ties can be avoided. The life index of reserves now available to the southwestern customers of El Paso will be increased. With the availability of gas at the northern

and southern extremities of the combined systems, as well as along its route, small quantities of gas may be easily and economically shifted and maximum advantage may be taken of capital expenditures. The unit cost of gas transportation must inevitably be reduced by such a full utilization of existing facilities.

The proposed acquisition by El Paso of Pacific's facilities will make possible a more flexible operation of the two systems to the advantage of all consumers. The two systems are interconnected and supplement one another. The gas reserves of West and South Texas, the San Juan Basin, as well as the vital, much needed reserves of Canada and the Rocky Mountains will become available and can be shifted to meet the varying requirements of both the Southwest and Northwest markets. Peak demands will be assured an adequate gas supply and the growth potential of this southwestern market area will be supported by the vast new reserves of a virgin character in Canada and the Rocky Mountain region.

(d) Maximum and efficient utilization of the existing El Paso system in the public interest will be the consequence of the acquisition. The acquisition will provide access to a source of reserves which can service markets now supplied by El Paso, and assure continued utilization of residue gas.

Moreover, the acquisition will assist in the resolution of the financing problem resulting from utilization of residue gas. The life index of reserves of residue gas is relatively low. This has caused a range of only 15-18 years in the maturities of most of El Paso's bond issues. El Paso, therefore, bears a heavier burden than any other gas transmission company in meeting its amortization schedules.

El Paso has been steadily endeavoring to increase the percentage of dry gas marketed by it. By increasing the

ratio of dry gas to residue gas, the life index of El Paso's total gas reserves will be extended. Thereafter, the range of maturities of its bonds can be accordingly extended. Such a result, however, can be accomplished only if El Paso possesses the requisite access to sources of dry gas which the Pacific facilities provide.

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Finally, El Paso, in order to provide for the future requirements of its customers, has acquired in its own right proven and potential gas acreage in Canada, access to which is now available only through the facilities of Pacific. Ownership of these facilities by El Paso provides the most economical means of utilizing these gas sources.

(e) Maximum and efficient utilization of the Pacific system in the public interest will be the consequence of the acquisition. The mounting demand for gas in market areas connected to El Paso's pipeline system provides the incentive for and requires the early development of the gas potential in Canada and the Rocky Mountain area. This demand justifies the immediate large expenditures necessary for such a program. The markets presently available to Pacific alone do not justify such an extensive gas acquisition program. Accordingly, Pacific's customers will have developed for them at an early date large gas reserves which will be available for their future needs and the inevitable future growth of the Pacific market.

The logic of this interdependence can be singularly illustrated by the El Paso agreement to take 100,000,000 cubic feet of gas per day from Canada which made feasible the delivery of a quantity of Canadian gas to the Pacific market which would not alone have justified its importation. El Paso proposes to employ an additional 300,000,000 cubic feet of Canadian gas per day in the near future. This will make it possible for other or

smaller quantities of gas to be moved from Canada for the use of Pacific's customers whose collective demand might not justify such deliveries. With the increasing use by El Paso of Canadian gas, the unit cost of such gas to Pacific's customers will inevitably be reduced.

Moreover, this same increasing El Paso demand for gas will bring about a maximum utilization of the entire Pacific pipeline system. Its overall load factor will be increased thereby reducing the unit cost of all gas to Pacific's customers.

El Paso's substantial gas reserves in Canada will become available to all customers of Pacific as well as to the customers of El Paso. Furthermore, all of El Paso's domestic reserves will likewise be

available to all of Pacific's customers. These latter reserves are of particular importance to the Pacific Northwest market since this Commission has already determined that it is in the public interest that this region be not solely dependent upon a foreign gas supply.

The future development and expansion of Pacific's facilities can be more easily and economically financed by a single integrated pipeline system.

(f) A single integrated pipeline system, under one management, will not only result in full realization of the advantages presented above but will also assure more efficient, economical and flexible operation with resulting savings to the gas consumer, in that:

(i) substantial dollar savings can be effected by the elimination of many expenses. Engineering, geological and exploration costs need not be duplicated. Multiple financing charges will be avoided. The overhead now borne by both companies maintaining separate offices and services can be materially curtailed.

(ii) an accounting system can be greatly simplified so that the cost of service and rate determinations can be more easily and satisfactorily fixed.

(iii) a single company possessing the combined assets and reserves of both systems will be able to acquire debt and equity capital more readily and on more favorable terms with resulting economies.

(iv) future financing will be more easily accomplished through dealing with only one group of security holders.

(v) the management of a single company is far less complex than the dual management presently existing. The integrated system will have trained personnel of long experience who are thoroughly familiar with the territory and operating problems of both the El Paso and Pacific systems. This experienced personnel can be best utilized in the operation of a single unified system.

(vi) singularity in management, operation, financing and ownership of reserves will provide a more flexible operation of both systems. Such flexible and and efficient operation will inevitably produce further economies.

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9. Table of Contents Listing Exhibits

Below is shown a Table of Contents which lists all exhibits and documents filed in compliance with Section 157.5 through Section 157.14 of the Commission's Regulations under the Natural Gas Act as amended.

Description	Exhibit	Contained in Following Books Which Constitute a Part of this Application Book No.
1. Articles of Incorporation and By-Laws	A	1
2. State Authorization	B	1
3. Company Officials	C	1
4. Subsidiaries and Affiliations	D	1
5. Corporation Authorization	E	1
6. Location of Facilities	F	1
7. Flow Diagram Showing Raily Design Capacity and Reflecting Operation with Proposed Facilities Added*	G	1
8. Flow Diagram Data	G-II	1
9. Total Gas Supply Data	H	1
10. Market Data	I	1
11. Cost of Facilities	K	1
12. Financing	L	1
13. Construction, Operation and Management	M	1
14. Revenues—Expenses—Income	N	1
15. Depreciation and Depletion	O	1
16. Tariff	P	1
17. Summary of Certificate Applications	X	1
18. Complete Description of Pacific's Facilities Sought To Be Abandoned	X-1	1

*A separate exhibit reflecting maximum capabilities which would normally be designated as Exhibit G-I is not submitted as a part of this application since the maximum capabiliites are reflected on the flow diagram making up Exhibit G.

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Conclusion

Wherefore, Pacific prays that the Commission assume its exclusive jurisdiction over this and El Paso's companion application, and permit and authorize Pacific to abandon, pursuant to Section 7(b) of the Natural Gas Act, its natural gas pipeline facilities constituting its natural gas pipeline system as it presently exists or as may hereinafter be constructed under authority of the Commission, and to abandon all services rendered by means of such facilities, in favor of the acquisition and operation thereof by El Paso as requested in El Paso's companion application hereto, conditioned, however, upon the granting by the Commission of El Paso's application and further conditioned upon the consummation of the merger proposed therein. Pacific further prays that this application and that of El Paso be consolidated and set for hearing at the earliest practicable date.

Respectfully submitted,

Pacific Northwest Pipeline Corporation

By: Allen B. Hiatt
Allen B. Hiatt,
Vice President

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1745—19th St., N. W.,
Washington 6, D. C.
Attorneys for Pacific Northwest Pipeline Corporation.

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DISTRICT OF COLUMBIA, ss.:

Allen B. Hiatt, being first duly sworn, on oath, says that he is Vice President of Pacific Northwest Pipeline Corporation; that as such officer he has executed the within and foregoing application, and that the matters and facts set forth therein are true to the best of his information, knowledge and belief.

ALLEN B. HIATT
Allen B. Hiatt

Subscribed and Sworn To before me, the undersigned authority, on this, the 7th day of August, 1957.

ELEANOR GIOVENNETTI
Eleanor Giovennetti
[Notarial Seal] *Notary Public, D. C.*

12846

Received Aug. 7, 1957

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION
WASHINGTON, D. C.

100-2 Formal

Docket No. G-13019

In the Matter of
EL PASO NATURAL GAS COMPANY

Application Pursuant to Section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity

El Paso Natural Gas Company (hereinafter referred to as "El Paso") by its attorneys applies for a certificate of public convenience and necessity pursuant to the provisions of Section 7(c) of the Natural Gas Act to acquire and oper-

ate all of the facilities, hereinafter more particularly described, of Pacific Northwest Pipeline Corporation (hereinafter referred to as "Pacific") constituting its pipeline system as it now exists and as it may be hereafter enlarged by construction or extension thereof prior to its proposed acquisition by El Paso.

1. Applicant and Its Representatives in These Proceedings

Applicant's name is El Paso Natural Gas Company. It is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is in the El Paso Natural Gas Building, El Paso, Texas. The names, titles and post-office addresses of the persons to whom correspondence or communications respecting this application are to be addressed are:

Paul Kayser, President,
El Paso Natural Gas Company,
El Paso Natural Gas Building,
El Paso, Texas.

Arthur H. Dean, Esq., Attorney,
48 Wall Street,
New York 5, N. Y.

Allen R. Grambling, Esq., Attorney,
El Paso Natural Gas Company,
El Paso Natural Gas Building,
El Paso, Texas.

George D. Horning, Jr., Esq., Attorney,
Paul R. Connolly, Esq., Attorney,
Hogan & Hartson,
Colorado Building,
Washington 5, D. C.

2. Authority Sought by El Paso

By this application El Paso seeks authority, pursuant to Section 7(c) of the Natural Gas Act, to acquire and operate the pipeline system of Pacific as presently constituted and as it may be enlarged or extended prior to the date of the proposed acquisition, including the right to construct any extensions, additions or other facilities which may have been certificated prior to such date. Contemporaneously herewith Pacific is filing an application for permission to cease the operation of and to abandon in favor of El Paso all of the facilities which El Paso seeks authority to acquire.

No other application to supplement or effectuate El Paso's proposal need be made to any other Federal, State or other regulatory body.

3. Facilities to be Acquired

In general, the facilities to be acquired constitute a natural gas transmission system consisting of approximately 2300 miles of main and lateral pipelines, extending from the San Juan Basin in New Mexico in a general northwesterly direction through the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington to a terminus at the international boundary between the United States and Canada.

A full and complete description of the facilities of Pacific which El Paso herein proposes to acquire and operate is contained in Ex-

hibit X-1. This exhibit is incorporated herein by reference and made a part hereof as though fully herein set forth.

Attached and made a part of this application as Exhibit S is a schedule which shows the depreciated cost as of May 31, 1957 of Pacific's facilities then in being, and an esti-

mate of the cost of the remaining facilities which Pacific proposes to construct under appropriate authorizations. Exhibit K, which is also attached and made a part of this application, shows the original cost of these facilities. El Paso proposes to acquire all of these facilities and following acquisition they would be recorded on the books of account and records of El Paso at the net depreciated cost of the facilities to Pacific at the time of acquisition thereof by El Paso.

4. Business of El Paso and Its Prior Applications for Certificates of Public Convenience and Necessity

El Paso is a natural gas company within the meaning of the Natural Gas Act. Its principal business is the ownership and operation of natural gas pipeline transmission facilities consisting of approximately 6700 miles of main and lateral pipelines. It is engaged in the production, acquisition by purchase, processing, transportation and marketing of natural gas. El Paso delivers and sells at wholesale natural gas to customers in West Texas, Southern and Northwestern New Mexico, Arizona, and to distribution companies at the Arizona-California boundary which companies transport the gas so sold and delivered through their distribution systems to consumers in California and Nevada.

El Paso was incorporated on November 28, 1928. Its original pipeline system, which extended from Lea County, New Mexico to El Paso, Texas, was completed in 1929, and was subsequently extended to Phoenix and other areas in Arizona. Its then existing pipeline system was first certificated by this Commission in Docket No. G-288. Subsequently thereto its line was extended to Blythe, California where connections were made for delivery of gas to California distribution companies. Thereafter, as shown by the various El Paso Dockets hereinafter listed, in response to

demands upon it for deliveries of additional quantities of natural gas to its customers, El Paso was

authorized in said Dockets to enlarge and extend its facilities and operations and to increase the volumes of gas to be transported.

The principal applications for certificates of public convenience and necessity heretofore filed by El Paso are the following:

Docket No. and Description

(a) G-288—Covering the gas pipeline system existing in 1938.

(b) G-655—For the transportation of 305,000 Mcf of natural gas per day from the Permian Basin in West Texas and Southeast New Mexico, and from the Panhandle Field in Texas, to Blythe, California, and delivery to the Southern California Gas Company and the Southern Counties Gas Company of California.

(c) G-931—For the transportation and sale of an additional 20,000 Mcf of natural gas per day to various customers of El Paso.

(d) G-1019, G-1051, G-1177—For the transportation of an additional 250,000 Mcf of natural gas per day from the Permian Basin in West Texas and Southeast New Mexico, for delivery to the Pacific Gas and Electric Company at the Arizona-California boundary near Topock, Arizona.

For the transportation of an additional 180,000 Mcf of natural gas per day from the Permian Basin in West Texas and Southeast New Mexico, and the delivery of 100,000 Mcf thereof jointly to the Southern California Gas Company and the Southern Counties Gas Com-

pany of California, at Blythe, California, and the delivery of 80,000 Mcf thereof to other customers of El Paso at various points in Arizona, New Mexico and Texas.

For the transportation of 167,000 Mcf of natural gas per day from the San Juan Basin in Northwest New Mexico and Southwest Colorado, whereof 150,000 Mcf per day were for delivery to the Pacific Gas and Electric Company at the Arizona-California boundary near Topock, Arizona, and 17,000 Mcf per day were for delivery to the Town of Gallup, New Mexico, and various other cities and towns in Northern Arizona and New Mexico.

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(e) G-1629—For the transportation of an additional 100,000 Mcf of natural gas per day from the Permian Basin in West Texas and Southeast New Mexico, and delivery to El Paso's customers located in Arizona, New Mexico and Texas.

(f) G-1630—For the transportation of an additional 120,000 Mcf of natural gas per day from the San Juan Basin in Northwest New Mexico and Southwest Colorado, whereof 100,000 Mcf per day were for delivery to the Pacific Gas and Electric Company and/or the Southern California Gas Company and the Southern Counties Gas Company of California at a point or points on the Arizona-California boundary; and up to a maximum of 20,000 Mcf per day were for delivery to the Nevada Natural Gas Pipeline Co. at a point on the Arizona-California boundary, near Topock, Arizona. Additionally, applicant was granted authority to deliver in excess of 34,000,000,000 cubic feet of natural gas per year through facilities previously certificated by the Commission in Docket No. G-1177.

(g) G-1631—For the transportation of an additional 200,000 Mcf of natural gas per day from the Permian Basin in West Texas and Southeast New Mexico for delivery to the Southern California Gas Company, Southern Counties Gas Company of California, and Pacific Gas and Electric Company, at points on the Arizona-California boundary.

(h) G-1998—Covering the acquisition of certain facilities from the West Texas Gas Company to be operated for the transportation of natural gas in Randall, Deaf Smith, Castro, Parmer, Bailey and Lamb Counties, Texas.

(i) G-2106—The Federal Power Commission issued a Certificate of Public Convenience and Necessity to this applicant authorizing it to construct and place in operation facilities to transport from the Permian Basin in Southeast New Mexico and West Texas an additional 300,000,000 cubic feet of natural gas per day, and from the San Juan Basin in Northwestern New Mexico an additional 100,000,000 cubic feet of gas per day, said

gas to be sold to the Southern California Gas Company, Southern Counties Gas Company of California and Pacific Gas and Electric Company in the amount of 300,000,000 cubic feet per day and to applicant's existing customers in West Texas, New Mexico and Arizona volumes of up to 100,000,000 cubic feet per day.

(j) G-8940—The Federal Power Commission issued a Certificate of Public Convenience and Necessity to El Paso authorizing it to construct and operate facilities for the purpose of transporting an additional 450,000,000 cubic feet of natural gas per day to the Southern California Gas Company, Southern Counties Gas Company of

California and Pacific Gas and Electric Company, and El Paso's existing customers in West Texas, New Mexico and Arizona. Deliveries were authorized in the amount of 175,000,000 cubic feet per day to the Southern California Gas Company and Southern Counties Gas Company of California; 175,000,000 cubic feet per day to Pacific Gas and Electric Company; and 100,000,000 cubic feet per day to El Paso's existing customers in West Texas, New Mexico and Arizona. In addition, El Paso was authorized to make various exchanges of natural gas with Pacific Northwest Pipeline Corporation in the San Juan Field of Northwestern New Mexico and at the United States-Canadian boundary at or near Sumas, Washington, all as more completely described in the application filed by El Paso in Docket No. G-8940.

(k) G-10499—The Federal Power Commission issued a Certificate of Public Convenience and Necessity to El Paso, authorizing it to construct and operate facilities for the purpose of transporting an additional 150,000,000 cubic feet of natural gas per day to the Southern California Gas Company, Southern Counties Gas Company of California and Pacific Gas and Electric Company. Deliveries were authorized in the amount of 75,000,000 cubic feet per day to the Southern California Gas Company and Southern Counties Gas Company of California and 75,000,000 cubic feet per day to the Pacific Gas and Electric Company.

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(l) G-11797—An application is pending, and hearings thereon are now in progress before the Federal Power Commission for Certificate in this Docket. El Paso seeks authority to construct and operate facilities for the delivery of 150,000,000 cubic feet of natural gas per

day to its California customers, and for the delivery of 35,000,000 cubic feet of natural gas per day to customers in Arizona, principally in Yuma, Arizona.

(m) G-12580—In this case, El Paso seeks authority to deliver 100,000,000 cubic feet of natural gas per day to the Southern California Edison Company through the facilities of the Southern California Gas Company and Southern Counties Gas Company of California. Hearings are also being held on this Docket.

Reference is hereby made by El Paso to the applications for Certificates of Public Convenience and Necessity that were filed in the Dockets referred to above for an additional description of the existing business, operations and properties of El Paso.

5. *El Paso's Need for the Facilities to be Acquired*

El Paso is now authorized to transport approximately 2,488,000,000 cubic feet of natural gas per day through its main line transmission facilities to its customers in West Texas, New Mexico, Arizona, Nevada and California. Two applications for certificates, Docket Nos. G-11797 and G-12580, are now pending seeking further expansions of its system for the delivery and sale of an additional 285,000,000 cubic feet of natural gas per day. In response to its customers' demands for still additional gas, El Paso will in the near future request authority to transport and deliver an additional 500,000,000 cubic feet of natural gas per day.

The expansion of El Paso's transmission facilities and the increased quantities of gas now marketed by it and which it proposes to market is attributable to the rapid population and industrial growth of the region served by it.

El Paso has pioneered in the marketing of residue gas and sells a greater quantity thereof than any other pipeline company. Of the

approximately 2½ billion cubic feet of natural gas per day which it presently transports, approximately 1½ billion is residue gas. Residue gas is produced in connection with the production of oil. The quantities thereof available are dependent upon the allowable production of oil. This results in limitations upon the total quantities of residue gas which may be produced and in variations in the rates of daily production thereof. Prior to the development by El Paso of a method of utilizing such gas for public consumption, such gas was considered a waste product and was flared, resulting in an enormous waste of an important natural resource.

The marketing by El Paso of vast quantities of such residue gas presents, however, serious problems. Because residue gas is not produced in response to its customers' demands, but rather in response to the daily allowable production of oil, deficiencies in quantities available and irregularities in the daily supply thereof require El Paso to supplement the supply of residue gas with large quantities of dry gas. It accordingly explored for and developed dry gas reserves principally in the San Juan Basin. In addition, El Paso is now, and for the past several years has been, engaged in an extensive exploration and development program not only in the Permian and San Juan Basins but also in the Rocky Mountain area and in Western Canada. These efforts are directed to the increasing of El Paso's dry gas reserves and are necessary to meet the peak demands on El Paso's system so as to enable it to overcome the wide fluctuations and periodic deficiencies in the supply of residue gas. Additional dry gas will permit El Paso to market increased quantities of residue gas.

As a further result of the marketing by El Paso of substantial quantities of residue gas, El Paso has one of the shortest debt amortization schedules in the industry.

Most of its bond issues have had 15-18 year maturities. This onerous amortization schedule has been due to the relatively short assured life of residue gas reserves and the large quantities of this gas marketed by El Paso. To lengthen its amortization schedule, El Paso requires additional dry gas reserves and for this reason urgently needs access to the potentially large reserves of such gas in the Rocky Mountain area and in Western Canada.

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In an effort to meet the rapidly increasing gas demands of El Paso's customers in California, particularly where local smog control efforts have accelerated the demands, El Paso has sought a means of access to the vast proven and potential dry gas reserves of the Rocky Mountain States and Western Canada. Pacific's pipeline system, coursing as it does the Rocky Mountain region and possessing connections to the fields of Western Canada, provides the only available means of such access, short of a duplicating line. El Paso recently acquired practically all (99.8%) of the common stock of Pacific. Now, to give and assure El Paso's customers the benefits of these reserves, transported in the most efficient and economical manner, El Paso proposes to acquire and operate the Pacific system.

Included with and made a part of this application as Exhibit F are geographic maps of suitable scale and detail showing and appropriately differentiating between all of the facilities now owned and operated by El Paso and the facilities of Pacific which El Paso will acquire and operate if this application is granted.

All the exhibits, which are set forth in the Table of Contents Listing Exhibits at the end of this application, are made a part of this application and are filed in conformity with the Commission's Regulations under the Natural Gas Act, and are for the purpose of showing fully the effect of the acquisition and operation of Pacific's fa-

cilities by El Paso. They furthermore demonstrate that the present and future public convenience and necessity will be served by the acquisition and operation of Pacific's facilities by El Paso, that such ownership and operation is economically feasible, and that El Paso is able and willing to perform properly the acts required to consummate the acquisition and operation of such facilities.

6. *The Business of Pacific and Its Prior Applications for Certificates of Public Convenience and Necessity*

Pacific Northwest Pipeline Corporation, whose facilities El Paso seeks authority to acquire, is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is in Salt Lake City, Utah. It is a natural gas company within the meaning of the Natural Gas Act. It owns and operates a pipe-

line transmission system, consisting of approximately 2125 miles of main and lateral pipelines extending, in a general northwesterly direction, from the San Juan Basin in New Mexico through the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington to a terminus at the Canadian Border. It possesses natural gas reserves in the San Juan Basin and in the States of Utah, Colorado and Wyoming. It has contracted to purchase a substantial quantity of natural gas from Canada. Pacific's pipeline facilities have been certificated by this Commission in Docket No. G-1429 and subsequent Dockets to which reference is hereby made for fuller description of such facilities.

Attached hereto as Exhibit X is a summary of the applications for certificates of public convenience and necessity which Pacific has heretofore filed with this Commission. In addition to Exhibit X-1, reference is also made to Pacific's Exhibit No. 122 in Docket No. G-10455 which

shows the location of Pacific's facilities as presently constructed and as proposed to be supplemented if the authorizations requested in that Docket are granted.

7. Plan of Acquisition: the Proposed Merger of Pacific into El Paso

El Paso proposes to acquire the certificated facilities of Pacific by merging Pacific into El Paso pursuant to Section 253 of the Delaware General Corporation Law.

El Paso presently owns 2,986,802 shares of the common stock of Pacific. This represents 99.8% of the outstanding common stock of that company. The proposed merger by which El Paso will acquire title to all of Pacific's facilities and assets is to be accomplished by filing with the Secretary of State of Delaware a "Certificate of Ownership and Merger, Merging Pacific Northwest Pipeline Corporation into El Paso Natural Gas Company" as authorized by Section 253 of the Delaware General Corporation Law. In connection with such merger El Paso will assume all the corporate debts and liabilities of Pacific. It will cancel all intercorporate debts, including a substantial indebtedness of Pacific to El Paso. Outstanding common stock of Pacific not owned by El Paso will be acquired by exchanging 14 shares of El Paso's common "B" stock for each 8 shares of Pacific common

stock. El Paso will then cancel all of its Pacific stock. Prior to the effective date of the merger, Pacific will call for redemption and thereafter cancel all of its outstanding preferred stock. A loan for this purpose will be made by El Paso to Pacific. The funds for this purpose will be raised by El Paso either by the sale of second preferred stock or by a bank loan. If this Commission authorizes the proposed merger, all required consents of bondholders of both companies will be obtained prior to the date of merger.

There is attached and made a part of this application, as Exhibit R, a copy of a proposed "Certificate of Ownership and Merger, Merging Pacific Northwest Pipeline Corporation into El Paso Natural Gas Company" which El Paso expects to file with the Secretary of State of Delaware should this application be granted. This certificate is all that is required by Section 253 of the Delaware General Corporation Law, to effect the acquisition proposed by this application. Likewise, forming part of Exhibit R is the text of Section 253 of the Delaware General Corporation Law. Attested copies of the resolutions of the Boards of Directors of El Paso and Pacific authorizing the filing of this and Pacific's companion application are attached hereto and made a part of this application as Exhibit E.

If authorized by this Commission, Pacific proposes to cease and abandon all its certificated facilities and services in favor of El Paso. If certificated by this Commission, El Paso will render any and all services now rendered or contemplated by Pacific through the use of said facilities.

If this application is granted and the proposed merger is consummated, El Paso, succeeding to all rights, obligations, franchises and privileges of Pacific, will abide by all lawful orders of this Commission. It will supply all customers presently supplied by Pacific and such other additional customers located contiguous to Pacific's pipeline system which this Commission may authorize to be served.

The only expenses to El Paso, resulting from this proposed merger, in addition to those hereinbefore stated, will be legal expenses and those ordinarily incident to the presentation of an application before this Commission.

8. *El Paso's Ability and Willingness Economically and Efficiently to Operate Facilities of Pacific*

El Paso is able and willing to do properly the acts and to perform efficiently the services contemplated by this application and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder. El Paso has trained personnel possessing long experience who are thoroughly familiar with the territory traversed by the pipeline systems of both companies and who are thoroughly cognizant of the operating problems of each company. This experience can be utilized to the fullest extent in the operation of a consolidated and unified system. El Paso is otherwise fully qualified and financially able to operate a single and unified system comprising both its facilities and those of Pacific. Pacific's facilities are so located that they can be economically and efficiently operated by El Paso. No curtailment or impairment of services to any Pacific customer will result. To the contrary, as hereinafter set forth, the acquisition and operation of Pacific's facilities by El Paso by means of the contemplated merger will effect efficiencies, economies and flexibilities in operations to the benefit of the customers of both El Paso and Pacific.

9. *Grounds of Public Convenience and Necessity*

El Paso represents that the acquistion by it of the facilities and assets of Pacific and the operation thereof by El Paso, as requested in this application, are and will be required by present and future public convenience and necessity. The acquisition would permit the consumers of natural gas of both El Paso and Pacific to be served by a single integrated company under the jurisdiction of this Commission which, exercising its authority under the Nat-

ural Gas Act, will regulate such a consolidated company in the overall public interest with due consideration to the efficient utilization of natural resources and their economical supply to consumers, thereby affording the public the following express advantages:

(a) Every customer of each separate company has an interest in seeing that his supplier is backed by the most comprehensive gas

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reserves possible in order that he may be assured of long continued economical gas service. All gas reserves found anywhere on both systems or reasonably accessable thereto will become available to all customers of both systems. The life index of such reserves will be materially increased thus assuring all customers sufficient gas sources to meet their present and future demands and providing for more efficient utilization of natural resources. Sources of gas will be available at each end of an integrated pipeline and along its route, thus permitting gas to be readily delivered for peak demands and employing the invested capital in existing facilities to its fullest extent. Large or small quantities may be more economically transported with resulting lower cost to the consumer.

(b) Although the marketing by El Paso of large quantities of residue gas has served a valuable economic function in the prevention of waste, it has created deliverability problems for El Paso which can only be solved by the addition of large volumes of dry gas to the reserves available to El Paso. In this way El Paso may make more adequate provision, now and in the future, against the deficiencies and irregularities in the supply of residue gas. The availability of residue gas is subject to oil production schedules rather than to the need of the gas consumer. It is more readily available in summer and in the

early days of the month. Such availability bears no relationship to the seasonal or peak demand of the gas user.

Access to and acquisition of such dry gas is required to meet the seasonal and peak demands on the El Paso system. Hence, to balance the use of residue gas, El Paso requires the access to the proven and potential reserves of dry gas in Canada and the Rocky Mountain area which may be obtained by the acquisition of Pacific's facilities. It is in the public interest that residue gas be economically utilized.

(c) The demands of the California and other southwestern markets can be most economically and efficiently met through the integration of the facilities and reserves of El Paso and Pacific.

The growing markets in California and at other points on the El Paso system are making extensive demands upon the company for additional gas. There are now pending before this Commission appli-

cations by El Paso to deliver an additional 285,000,000 cubic feet of gas per day. To meet the further demands of its customers, El Paso is now planning a further delivery of an additional 500,000,000 cubic feet of gas per day. This latter gas must come largely from the reserves in Canada and the Rocky Mountain States.

Canadian and Rocky Mountain gas can be marketed to California and other southwestern points more economically by the acquisition of Pacific's facilities than by any other means. Duplication of facilities can be avoided. The life index of reserves now available to the southwestern customers of El Paso will be increased. With the availability of gas at the northern and southern extremities of the combined systems, as well as along its route, small quan-

tities of gas may be easily and economically shifted, and maximum advantage may be taken of capital expenditures. The unit cost of gas transportation must inevitably be reduced by such a full utilization of existing facilities.

The proposed acquisition by El Paso of Pacific's facilities will make posible a more flexible operation of the two systems to the advantage of all consumers. The two systems are interconnected and supplement one another. The gas reserves of West and South Texas, the San Juan Basin, as well as the vital, much needed reserves of Canada and the Rocky Mountains will become available and can be shifted to meet the varying requirements of both the Southwest and Northwest markets. Peak demands will be assured an adequate gas supply and the growth potential of this southwestern market area will be supported by the vast new reserves of a virgin character in Canada and the Rocky Mountain region.

(d) Maximum and efficient utilization of the existing El Paso system in the public interest will be the consequence of the acquisition. The acquisition will provide access to a source of reserves which can service markets now supplied by El Paso, and assure continued utilization of residue gas.

Moreover, the acquisition will assist in the resolution of the financing problem resulting from utilization of residue gas. The life index of reserves of residue gas is relatively low. This has caused a range of only 15-18 years in the maturities of most of El Paso's bond

issues. El Paso, therefore, bears a heavier burden that any other gas transmission company in meeting its amortization schedules.

El Paso has been steadily endeavoring to increase the percentage of dry gas marketed by it. By increasing the

ratio of dry gas to residue gas, the life index of El Paso's total gas reserves will be extended. Thereafter, the range of maturities of its bonds can be accordingly extended. Such a result, however, can be accomplished only if El Paso possesses the requisite access to sources of dry gas which the Pacific facilities provide.

Finally, El Paso, in order to provide for the future requirements of its customers, has acquired in its own right proven and potential gas acreage in Canada, access to which is now available only through the facilities of Pacific. Ownership of these facilities by El Paso provides the most economical means of utilizing these gas sources.

(e) Maximum and efficient utilization of the Pacific system in the public interest will be the consequence of the acquisition. The mounting demand for gas in market areas connected to El Paso's pipeline system provides the incentive for and requires the early development of the gas potential in Canada and the Rocky Mountain area. This demand justifies the immediate large expenditures necessary for such a program. The markets presently available to Pacific alone do not justify such an extensive gas acquisition program. Accordingly, Pacific's customers will have developed for them at an early date large gas reserves which will be available for their future needs and the inevitable future growth of the Pacific market.

The logic of this interdependence can be singularly illustrated the El Paso agreement to take 100,000,000 cubic feet of gas per day from Canada which made feasible the delivery of a quantity of Canadian gas to the Pacific market which would not alone have justified its importation. El Paso proposes to employ an additional 300,000,000 cubic feet of Canadian gas per day in the near future. This will make it possible for other or smaller quantities of gas to be moved from Canada for the use of Pacific's customers whose collective demand might not justify such deliveries.

With the increasing use by El Paso of Canadian gas, the unit cost of such gas to Pacific's customers will inevitably be reduced.

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Moreover, this same increasing El Paso demand for gas will bring about a maximum utilization of the entire Pacific pipeline system. Its overall load factor will be increased thereby reducing the unit cost of all gas to Pacific's customers.

El Paso's substantial gas reserves in Canada will become available to all customers of Pacific as well as to the customers of El Paso. Furthermore, all of El Paso's domestic reserves will likewise be available to all of Pacific's customers. These latter reserves are of particular importance to the Pacific Northwest market since this Commission has already determined that it is in the public interest that this region be not solely dependent upon a foreign gas supply.

The future development and expansion of Pacific's facilities can be more easily and economically financed by a single integrated pipeline system.

(f) A single integrated pipeline system, under one management, will not only result in full realization of the advantages presented above but will also assure more efficient, economical and flexible operation with resulting savings to the gas consumer, in that:

(i) substantial dollar savings can be effected by the elimination of many expenses. Engineering, geological and exploration costs need not be duplicated. Multiple financing charges will be avoided. The overhead now borne by both companies maintaining separate offices and services can be materially curtailed.

(ii) an accounting system can be greatly simplified so that the cost of service and rate determinations can be more easily and satisfactorily fixed.

(iii) a single company possessing the combined assets and reserves of both systems will be able to acquire debt and equity capital more readily and on more favorable terms with resulting economies.

(iv) future financing will be more easily accomplished through dealing with only one group of security holders.

(v) the management of a single company is far less complex than the dual management presently existing. The integrated system will have trained personnel of long experience who are thoroughly familiar with the territory and operating

problems of both the El Paso and Pacific systems. This experienced personnel can be best utilized in the operation of a single unified system.

(vi) singularity in management, operation, financing and ownership of reserves will provide a more flexible operation of both systems. Such flexible and efficient operation will inevitably produce further economies.

10. *Table of Contents Listing Exhibits*

Below is shown a table of contents which lists all exhibits and documents filed in compliance with Section 157.5

through Section 157.16 of the Commission's Regulations under the Natural Gas Act, as amended.

Description	Exhibit	Contained in Following Books Which Constitute a Part of this Application Book No.
1. Articles of Incorporation and By-Laws	A	1
2. State Authorization	B	1
3. Company Officials	C	1
4. Subsidiaries and Affiliations	D	1
5. Corporate Authorization	E	1
6. Location of Facilities	F	1
7. Flow Diagram Showing Daily Design Capacity and Reflecting Operation with Proposed Facilities Added*	G	1
8. Flow Diagram Data	G-II	1
9. Total Gas Supply Data	H	1
10. Market Data	I	1
11. Cost of Facilities	K	1
12. Financing	L	1

* A separate exhibit reflecting maximum capabilities which would normally be designated as Exhibit G-I is not submitted as a part of this application since the maximum capabilities are reflected on the flow diagram making up Exhibit G.

Description	Exhibit	Contained in Following Books Which Constitute a Part of this Application Book No.
13. Construction, Operation and Management	M	1
14. Revenues—Expenses—Income	N	1
15. Depreciation and Depletion	O	1
16. Tariff	P	1
17. Effect of Acquisition on Existing Contracts and Tariffs	Q	1
18. Acquisition Contracts	R	1
19. Accounting	S	1
20. Summary of Certificate Applications of Pacific	X	1
21. Complete Description of Pacific's Facilities Sought to be Acquired	X-I	1

CONCLUSION

WHEREFORE, El Paso prays that the Commission assume its exclusive jurisdiction over this and Pacific's companion application and issue to it a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing it to acquire and operate all the facilities of the Pacific hereinbefore described, and it further prays

that this application and that of Pacific be consolidated and set for hearing at the earliest practicable date.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY
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12085

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

PAUL KAYSER, being first duly sworn, on oath, says that he is President of El Paso Natural Gas Company; that as such officer he has executed the within and foregoing application, and that the matters and facts set forth therein are true to the best of his information, knowledge and belief.

PAUL KAYSER
Paul Kayser

SUBSCRIBED AND SWORN To before me ~~the~~ undersigned authority, on this, the 6th day of August, 1957.

JOHN W. P. SLOBADIN
Notary Public

John W. P. Slobadin
Notary Public, State of New York
Residing in Bronx County
Bronx Co. Clk's No. 03-3707300
Certificates filed in
New York, Knigs, Queens, Nassau:
Richmond, Westchester & Suffolk Co. Clk's
Commission Expires March 30, 1959

[Notarial Seal]

12899

EL PASO NATURAL GAS COMPANY

Docket No. G-
Exhibit F
Schedule 1
Sheet 1 of 4

SUPPLEMENT COVERING AN EXPLANATION OF THE VARIOUS REFERENCE NUMBERS GIVEN ON THE MAP REFLECTING CUSTOMER CONNECTIONS AND LOCATIONS

Map Ref.	*Name of Customer*	*Approximate Location*
		Southern Arizona
1	Southern California Gas Company	Ehrenberg
2	Southern Counties Gas Company of California	Ehrenberg
3	Arizona Public Service Company	Yuma
4	Arizona Public Service Company	Yuma Power Plant
5	Arizona Public Service Company	Wenden and Salome
6	Phelps Dodge Corporation	Ajo
7	Ajo Improvement Company	Ajo
8	Arizona Public Service Company	Ajo Heights
9	Arizona Public Service Company	Ajo Heights Power Plant
10	Arizona Public Service Company	Phoenix Power Plant
11	Arizona Public Service Company	Phoenix Area
12	Mesa, City of	Mesa
13	U. S. Interior Dept.—Pima Indian Agency	Sacaton
14	Natural Gas Service Company	Coolidge, Florence, etc.
15	Magma Natural Gas Company	Magma Area
16	Magma Copper Company	Superior
17	Arizona Public Service Company	Ray and Sonora
18	Miami Copper Company	Miami
19	International Smelting and Refining Company	Globe-Miami
20	Inspiration Consolidated Copper Company	Inspiration
21	Arizona Public Service Company	Globe-Miami and Roy
22	Arizona Public Service Company	Miami Power Plant
23	Kennecott Copper Corporation	Hayden
24	Arizona Public Service Company	Winkelman
25	Natural Gas Service Company	Hayden
26	San Manuel Copper Corporation	Mammoth
27	San Pedro Utilities	Mammoth
28	Arizona Public Service Company	Saguaro Power Plant
29	Tucson Gas, Electric Light and Power Company	Tucson Power Plant
30	Tucson Gas, Electric Light and Power Company	Tucson Area
31	Benson and Tombstone, Towns of	Benson and Tombstone
32	San Pedro Natural Gas Service	St. David and Elfrida
33	Apache Powder Company	Benson
34	Arizona Public Service Company	Ft. Huachuca

Map Ref.	Name of Customer	Approximate Location
		Southern Arizona
35	Citizens Utilities Company	Nogales
36	Citizens Utilities Company	Nogales Power Plant
37	Arizona Public Service Company	Mammoth and New Mammoth
	12900	
38	Cananea Consolidated Copper Company	Cananea, Mexico
39	Southern Utilities Company	Patagonia
40	Phelps Dodge Corporation	Bisbee-Douglas
41	Arizona Public Service Company	Bisbee-Douglas Area
42	Paul Lime Plant	Paul Spur
43	Arizona Public Service Company	Bisbee-Douglas Power Plant
44	Safford, Town of	Safford
45	Safford, Town of	Safford Power Plant
46	Arizona Public Service Company	Sulphur Springs and McNeal
47	Arizona Public Service Company	Bowie
48	Geronimo Natural Gas Company	Bowie Area
49	Phelps Dodge Corporation	Morenci
50	Natural Gas Service Company	Clifton and Morenci
51	General Utilities, Incorporated	Duncan and Safford Valley
52	Willcox, City of	Willcox
53	Willcox, City of	R.E.A. Power Plant, Cochise
132	Arizona Public Service Company	Near Buckeye
133	Southern Union Gas Company	Humboldt
134	Southern Union Gas Company	Mayer
		Northern Arizona
54	Pacific Gas and Electric Company	Topock
55	Nevada Natural Gas Pipe Line Company	Topock
56	Southern Union Gas Company	Topock Area
57	Southern Union Gas Company	Kingman
58	Southern Union Gas Company	Seligman
59	Southern Union Gas Company	Ashfork
60	Southern Union Gas Company	Chino Valley
61	Southern Union Gas Company	Prescott
62	Southern Union Gas Company	Williams
63	Southern Union Gas Company	Bellmont Area

(12900)

Map Ref.	Name of Customer	Approximate Location
		Northern Arizona
64	Southern Union Gas Company	Flagstaff
65	Southern Union Gas Company	Navajo Tribes
66	Southern Union Gas Company	Winslow
67	Southern Union Gas Company	Joseph City
68	Southern Union Gas Company	Holbrook
	12901	
		Northern New Mexico
69	Southern Union Gas Company	Anaconda Copper Co.
70	Southern Union Gas Company	Gallup
71	Gamerco Coal Company	Gallup
72	Gallup, Town of	Gallup Power Plant
73	Mountainair, Town of	Mountainair
74	Socorro, Town of	Socorro
75	Southern Union Gas Company	Navajo Tribes
76	Southern Union Gas Company	Kirtland and Fruitland
77	Phillips Petroleum Company	Blanco Field
78	Southern Union Gas Company	Grants
128	Southern Union Gas Company	McKinley County
135	El Paso Natural Gas Products Company	San Juan County
136	El Paso Natural Gas Products Company	Wingate
137	El Paso Natural Gas Products Company	Ciniza Refinery
138	El Paso Natural Gas Products Company	Prewitt Refinery
		Southern New Mexico
79	R. W. Edington	Rodeo Area
80	Lordsburg, Town of	Lordsburg
81	Lordsburg, Town of	Lordsburg Power Plant
82	Lea County Gas Company	Southern New Mexico
83	Kennecott Copper Corporation	Hurley
84	Deming, Town of	Deming
85	Deming, Town of	Deming Power Plant
86	Las Cruces, Town of	Las Cruces
87	El Paso Natural Gas Products Company	Near El Paso
88	El Paso Electric Company	Near El Paso
89	Southern Union Gas Company	White Sands Proving Grounds
90	Southern Union Gas Company	Holloman Air Base
91	Southern Union Gas Company	Alamogordo
92	Southern Union Gas Company	Tatum
93	Southern Union Gas Company	Carlsbad Area

Map Ref.	Name of Customer	Approximate Location
		Southern New Mexico
94	U. S. Potash Company	Carlsbad
95	Southern Union Gas Company	Clovis Area
96	Gulf Oil Company	Lea County
97	Western Natural Gas Company	Lea County
98	Jal Gas Company	Jal, Lea County and Eddy County
129	Lea County Gas Company	Near Deming
130	Lea County Gas Company	Hidalgo County
131	Lea County Gas Company	Luna County

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		West Texas
99	American Smelting and Refining Company	El Paso
100	Southwestern Portland Cement Company	El Paso
101	Standard Oil Company of Texas	El Paso
102	Phelps Dodge Refining Corporation	El Paso
103	Southern Union Gas Company	El Paso
104	The Texas Company	El Paso
105	Lea County Gas Company	El Paso Area
106	Dell City Gas Company	Dell City
107	R. Olsen Oil Company	Lyman Plant
108	Fort Worth Pipe and Supply	Lyman
109	Warpee Pipeline Incorporated	Ward County
110	Ward County Gas Company	Ward County
111	Pioneer Natural Gas Company	Goldsmith
112	Gulf Oil Company	Ward County
113	Atlantic Refining Company	Crane County
114	Southern Union Gas Company	Crane
115	Rankin Gas Company	Upton County
116	Empire Southern Gas Company	Big Spring
117	Pecos Growers Gas Company	Pecos County
		Northwest Texas
118	Pioneer Natural Gas Company	Wasson
119	Yoakum County Gas Company	Plains
120	Pioneer Natural Gas Company	Slaughter
121	Whiteface, City of	Whiteface
122	Morton, City of	Morton
123	Pioneer Natural Gas Company	Pettit and Pep
124	Pioneer Natural Gas Company	Amherst Area
125	Southwestern Public Service Company	Lamb County
126	Pioneer Natural Gas Company	Hereford Area
127	Pioneer Natural Gas Company	Bushland

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PROSPECTUS

El Paso Natural Gas Company
Common B Stock
(Par Value $3 Per Share)

El Paso Natural Gas Company herein offers to holders of shares of Common Stock of Pacific Northwest Pipeline Corporation the privilege of exchanging their shares of Common Stock of that company for shares of Common B Stock of El Paso Natural Gas Company on the basis and subject to the terms and conditions set forth herein under the heading "Exchange Offer to Stockholders of Pacific Northwest Pipeline Corporation". Unless extended as provided herein, the Exchange Offer will expire at 3:30 P.M., Eastern Standard Time, on February 8, 1957. The Exchange Offer may be accepted by the deposit with City Bank Farmers Trust Company, New York, N. Y.. of stock certificates for shares of Common Stock of Pacific Northwest Pipeline Corporation, together with the duly executed Transmittal Letter provided for that purpose.

These Securities Have Not Been Approved or Disapproved by the Securities and Exchange Commission Nor Has the Commission Passed Upon the Accuracy or Adequacy of This Prospectus. Any Representation to the Contrary is a Criminal Offense.

The date of this Prospectus is January 8, 1957.

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No person has been authorized to give any information or to make any representations, other than those contained in this Prospectus, in connection with the offer contained

in this Prospectus, and, if given or made, such information or representations must not be relied upon as having been authorized by El Paso Natural Gas Company. This Prospectus does not constitute an offer by El Paso Natural Gas Company to sell securities in any state to any person to whom it is unlawful for that company to make such offer in such state. Neither the delivery of this Prospectus nor any sale made hereunder shall under any circumstances create an implication that there has been no change in the affairs of El Paso Natural Gas Company or Pacific Northwest Pipeline Corporation since the date hereof.

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For El Paso Natural Gas Company and Subsidiary Companies Consolidated 44
For Pacific Northwest Pipeline Corporation and Wholly-Owned Subsidiary Companies Consolidated 56
For Northwest Production Corporation (Unconsolidated Subsidiary of Pacific) 64

El Paso Natural Gas Company (herein referred to both as the "Company" and as "El Paso") has filed with the Securities and Exchange Commission, Washington, D. C., a registration statement (herein, together with all amendments thereto, sometimes referred to as the "Registration Statement") under the Securities Act of 1933, as amended, with respect to the shares of Common B Stock offered hereby. For further information as to the Company, Pacific Northwest Pipeline Corporation (herein referred to as "Pacific"), and the Common B Stock, reference is made to the Registration Statement, including the exhibits and financial statements which are a part thereof.

14109

EXCHANGE OFFER TO STOCKHOLDERS OF PACIFIC NORTHWEST PIPELINE CORPORATION

Purpose

The Company desires to obtain a minimum of 2,435,000 shares of the outstanding Common Stock of Pacific Northwest Pipeline Corporation and as many additional shares of such outstanding stock as it can by this offer. If the holders of all Pacific shares accept the Exchange Offer, the Company will issue and deliver a maximum of 5,235,952 shares of its Common B Stock. The 5,235,952 figure is computed by adding to the 2,851,973 shares of Pacific now outstanding and subscribed for, 140,000 shares which are

issuable upon conversion of outstanding Interim Notes of Pacific, making a total of 2,991,973 shares, and multiplying this figure by 1¾ which is the number of shares of Common B Stock issuable in exchange for each share of Pacific Common Stock.

The Common B Stock

The Company's Common B Stock is identical with and entitled to all the rights of the Company's Common Stock on a share for share basis in all respects, except that the Common B Stock is excluded from participating in any cash dividends paid on the Common Stock during 1957 up to but not exceeding $1.30 per share (or an appropriate adjusted amount per share in case of any stock split-ups, stock dividends, readjustment or reclassification of Common Stock occurring subsequent to the date of this Prospectus). On January 1, 1958 the Common B Stock will automatically become and be Common Stock without any further action on the part of the Company or the holders of the Common B Stock.

The Exchange Offer

The Company hereby offers shares of its Common B Stock in exchange for shares of outstanding Pacific Common Stock, at the rate of fourteen shares of Common Stock for eight shares of Pacific Common Stock, such offer being on the terms and conditions hereinafter set forth, and being referred to herein as the "Exchange Offer".

Stockholders of Pacific who desire to accept this Exchange Offer must irrevocably deposit their stock certificates for Pacific Common Stock, together with the duly completed and executed Transmittal Letter provided for that purpose, with City Bank Farmers Trust Company, New York, N. Y., the "Exchange Agent", by 3:30 P.M., Eastern Standard Time, on February 8, 1957, or such later date as may be fixed in the manner specified below.

Promptly after written notification to the Company by the Exchange Agent that 2,435,000 shares of Pacific Common Stock (approximately 81.4% of the maximum shares to be outstanding) have been so deposited with the Exchange Agent, but not otherwise, the Company will cause its Common B Stock Transfer Agent, The Chase Manhattan Bank, to deliver to the Exchange Agent, for the accounts of the respective depositing stockholders, in exchange for the deposited shares of Pacific Common Stock, the shares of Common B Stock of the Company which are required to be issued in connection with the exchange, duly registered as specified in the various Transmittal Letters. As soon thereafter as practicable, the Exchange Agent shall deliver such shares to the various depositing stockholders of Pacific entitled thereto. The "Effective Date of the Exchange Offer" as used herein means the date and time when the Transfer Agent first makes delivery to the Exchange Agent of shares of Common B Stock of the Company in exchange for shares of Pacific Common Stock.

If the Effective Date of the Exchange Offer occurs before February 8, 1957, the Exchange Offer shall nevertheless continue until February 8, 1957, and may continue thereafter, at the option of the Company, until May 1, 1957. If the Effective Date of the Exchange Offer has not occurred by or before February 8, 1957, the Company may at its option extend it to 3:30 P.M., Eastern Standard Time, on February 25, 1957, and shall, if so requested by Pacific, extend it up to 3:30 P.M., Eastern Standard Time, on April 9, 1957, provided, however, that if such Effective

Date has not occurred by or before February 8, 1957 but does occur during any extension of the Exchange Offer, the continuation of the Exchange Offer after such Effective Date shall be entirely at the option of the Company and it may be continued until May 1, 1957.

No fractional shares of Common B Stock of the Company will be issued in connection with the Exchange Offer. Full shares of Common B Stock, representing the aggregate interest of all depositing stockholders in less than one full share, will be issued and delivered to the Exchange Agent for the stockholders entitled thereto. Any Pacific stockholder who deposits a number of shares of Pacific Common Stock which would entitle him to a fractional share of Common B Stock of the Company will have the option either to sell his interest in less than one share of Common B Stock of the Company or to purchase an interest sufficient to entitle him to one additional full share. Such depositing stockholder may exercise this option by appropriate instructions on the Transmittal Letter to the Exchange Agent, which will act as the stockholders' agent for this purpose in accordance with such instructions. In the absence of instructions to the contrary, a depositing stockholder will be deemed to have requested the sale of his interest in less than one share of Common B Stock of the Company. After setting off sell orders against buy orders to the extent possible, the Exchange Agent will, as soon as practicable after the Effective Date of the Exchange Offer, sell or purchase on the market (on a when issued basis or otherwise) the number of whole shares of Common B Stock necessary to take care of any excess of sell or buy orders on hand at such Effective Date. Settlement will be made with persons submitting sell or buy orders prior to such Effective Date on the basis of the average sale or purchase price of any shares of Common B Stock so sold or purchased by the Exchange Agent, plus or minus, as the case may be, the net cost of executing any such orders and of any transfer taxes applicable thereto. Sell and buy orders received after such Effective Date will be settled weekly thereafter through the expiration date of the Exchange Offer by similarly setting off sell orders against buy orders to the extent possible and sell-

ing or purchasing on the market the number of shares of Common B Stock necessary to take care of the excess or sell or buy orders on hand at the end of each such weekly period.

In connection with the Exchange Offer, an agreement (hereinafter called "the Agreement"), a copy of which is filed as an exhibit to the Registration Statement to which reference is hereby made, has been entered into between the Company, Pacific, and ten stockholders of Pacific owning in the aggregate approximately 348,000 shares of its Common Stock and comprising the entire membership of its Board of Directors. Under the Agreement the Company is required, subject to various contingencies, to make the Exchange Offer, except that it is not required to mail the Offer to any stockholders of Pacific residing in a state where the Company and Pacific have deemed it inadvisable to qualify the Common B Stock for the purpose of the Offer. The stockholders of Pacific who are parties to the Agreement agree to deposit their stock pursuant to the Exchange Offer as soon as practicable within the original 30-day period of the Exchange Offer, provided the representations and warranties of the Company in the Agreement are true and correct and the Company has complied with the Agreement. The Agreement contains various representations, warranties and covenants on the part of the Company and Pacific, including an agreement by the Company, at the request of Pacific, to lend to Pacific from time to time prior to December 31, 1957 up to $15,000,000 against subordinated unsecured 5% promissory notes of Pacific payable on or before December 31, 1957 at Pacific's option either in cash or by delivery of shares of Common Stock of Pacific at the rate of one share for each $30 principal amount of notes. The agreement to make this loan exists irrespective of whether the Exchange Offer is ever consummated. While Pacific has not at the date of this Prospectus requested that the Company make

it a loan under this agreement it is expected that such a request will be made.

Upon the occurrence of any of the following events, the Company shall, upon notice in writing to the Exchange Agent, have the right to withdraw the Exchange Offer at any time prior to the Effective Date of the Exchange Offer, and in the event of such withdrawal, or in the event holders of at least 2,435,000 shares of Pacific Common Stock do not accept the Exchange

Offer so that it is never consummated, all stock certificates for Pacific Common Stock theretofore deposited with the Exchange Agent shall be returned promptly to the depositing stockholders:

(a) Any material adverse change in the condition of Pacific or of Northwest Production Corporation, a subsidiary of Pacific, from their condition as evidenced by an August 31, 1956 consolidated balance sheet of Pacific and its wholly-owned subsidiary, Westcoast Investment Corporation, and by a September 30, 1956 balance sheet of Northwest Production Corporation, both of which are attached to the Agreement, except for changes occurring (i) in the ordinary course of business, or (ii) as a result of expenditures incident to the construction and completion of Pacific's pipeline system, or (iii) as a result of the issuance of or agreements to issue stock by Northwest Production Corporation as contemplated by the Agreement, or (iv) as a result of expenditures made or obligations incurred by Northwest Production Corporation incident to its drilling program, leasehold acquisitions, construction of a gathering system and other operations, or (v) as a result of advances made by Pacific to its wholly-owned subsidiary Pacific Northwest Realty Corporation not exceeding $500,000 for organiza-

tion expenses and for the purpose of acquiring a site for an office building.

(b) The pendency of any material litigation or governmental proceeding or investigation (or to the knowledge of Pacific or members of its Board of Directors the threat thereof) with respect to Pacific or its subsidiaries, with certain exceptions as provided in the Agreement.

(c) The default by Pacific in the performance of any of the terms, conditions or obligations under any of its Certificates of Public Convenience and Necessity or with respect to any order, writ or decree of any commission, court or administrative agency, or the invalidity of any such Certificates, or the material default by Pacific or its subsidiaries in the performance of any agreement to which any of them is a party.

(d) The declaration or payment of any dividend or the making of any distribution to shareholders by Pacific or any of its subsidiaries except as permitted by the Agreement.

(e) The issuance or sale by Pacific of any of its Common Stock except pursuant to the subscription agreement referred to in Note 2 under the caption "Management" below, or in payment, pursuant to the terms thereof, of any loan, up to $15,000,000 maximum aggregate principal amount, made by the Company to Pacific pursuant to the Agreement, or upon conversion or in payment of Pacific's outstanding 5.6% Series B Interim Notes in accordance with their terms.

The Company will pay all expenses in connection with the Exchange Offer, including all Federal and State transfer taxes, except for the expenses and taxes in connection

with the execution of buy and sell orders by depositing stockholders entitled to fractional interests. No transfer stamps or funds need be delivered with the shares of Common Stock of Pacific unless the Common B Stock of the Company is to be issued in a name other than that of the registered owner.

The Company will apply for the listing of the Common B Stock on the New York Stock Exchange and the Pacific Coast Stock Exchange. The Company's Common Stock is listed on those Stock Exchanges.

The United States Internal Revenue Service has issued a ruling to the effect that a holder of Pacific Common Stock whose shares are exchanged pursuant to this Exchange Offer will not thereby realize any gain or loss which will be recognized for Federal income tax purposes, but that any gain or loss will be recognized to the extent that it results from the sale for cash of any interest in less than one share of Common B Stock of the Company.

Anti-Trust Opinion

Messrs. Sullivan & Cromwell, who are advising the Company with respect to the Exchange Offer, have rendered an opinion to the Company with respect to the application of the anti-trust

laws to the acquisition by the Company of 80% or more of the Common Stock of Pacific of which the following is a summary: The opinion first summarizes the operations of the Company and Pacific and states it to be counsel's understanding that the purpose of the proposed transaction is to bring about the most effective and economic supply structure for servicing the needs of natural gas consumers. After reviewing possible problem areas, the extensive regulation by the Federal Power Commission of the activities of and rates charged by both companies, the

fact that statutory immunity from Section 7 of the Clayton Act is not available, and the importance of the conservationist effects of the transaction, the opinion notes that the antitrust questions raised have no controlling precedent and are original, significant and difficult ones, which may require extensive hearings, proceedings and examination and cross-examination of witnesses and experts to resolve. Counsel concludes that while the matter is not entirely free from doubt, it is their opinion that the proposed transaction is not in violation of the anti-trust laws presently in effect as so far construed by the courts. The opinion states that it is rendered on the assumption that after full investigation, the purpose of the transaction would continue to prove to be as previously indicated, and that it is qualified by the fact that problems under Section 7 cannot be evaluated definitely because of the paucity of judicial decisions interpreting the statute.

Operation of Pacific After the Exchange Offer

If the Exchange Offer is consummated, it is expected that Pacific will be operated as a subsidiary of the Company, and the management of the Company has no present intent of merging Pacific into the Company or having the Company acquire Pacific's assets. The reasons for this are that (a) the Agreement includes a representation to this effect, (b) the ruling of the Internal Revenue Service referred to above was based on such representation, and (c) a merger or acquisition of assets would necessitate the refunding at least of a substantial part of Pacific's outstanding debt, which in light of present interest rates could be done only at higher rates.

If the Exchange Offer is consummated, it is expected that Mr. Paul Kayser, President of the Company, and Mr. Howard Boyd, a Vice President of the Company, will become directors of Pacific, and that certain of the Com-

pany's officers, the identity of whom has not yet been determined, may also become officers of Pacific.

Integration and Coordination of Operations of the Pipeline Systems of El Paso and Pacific; Accounting Treatment

There is included hereafter a map showing the pipelines of the Company and its subsidiaries and the pipelines of Pacific. If the Exchange Offer is consummated, the operation of these two pipeline systems, which do not duplicate but rather complement each other, will be coordinated in such a manner as to maximize the effective and economic utilization of the natural gas resources of both companies in the United States. The Company is convinced that the most economic and efficient use of Canadian gas from the British Columbia-Alberta fields, as it becomes available, will be unlikely unless its use is fully coordinated with gas from the San Juan Basin and elsewhere along the lines of the pipelines of the Company and Pacific. Coordination of operations also should enable the Company to integrate and operate more effectively certain oil producing, refining and marketing facilities now owned by the Company, by Pacific, or by their respective subsidiaries. Common control and operation of the pipeline systems of the Company and Pacific is, in the opinion of the Company, the best way of assuring the coordination of their operation. It should bring about the most effective and economic supply structure for servicing the needs of the natural gas consumers in the California and Southwest markets presently served by the Company and in the Northwest market proposed to be served by Pacific, and it should redound to the benefit of, and be in the interest of, the stockholders and customers of the two companies and the members of the public who purchase and use the gas which will be transmitted through the coordinated pipeline systems.

Upon consummation of the Exchange Offer the Company's investment in Pacific Common Stock will be recorded in the Company's books at the consolidated book value of Pacific's Common

Stock as shown on Pacific's consolidated balance sheet at date of acquisition by the Company; the Common B Stock issued therefor will be credited to the Common B Stock Capital account at $3 per share (the par value thereof); and the balance will be credited to the Premium on Capital Stock account.

THE RELATIVE MARKET VALUE OF THE COMMON STOCKS OF EL PASO AND PACIFIC, THE BOOK VALUES AND ADJUSTED BOOK VALUES OF SUCH STOCKS, THEIR EARNINGS PER SHARE AND THE DIVIDENDS PAID THEREON.

The following table shows the high and low sale prices of the Common Stock of the Company (adjusted for the two-for-one split-up effective December 27, 1956) and the high and low bid and asked prices on the over-the-counter market (to the extent available) of the Common Stock of Pacific for each quarterly period within the last two years and, in addition, shows the market prices for such stocks on January 2, 1957. The Common Stock of the Company is listed on the New York and Pacific Coast Stock Exchanges and the prices shown for it are the reported sale prices on the New York Stock Exchange. The Common Stock of Pacific is not listed on any Stock Exchange, and the range of bid and asked prices shown for it are as published in The Wall Street Journal, except that the range on January 2, 1957 is as reported to the Company by the National Quotation Bureau Inc.

	Common Stock of the Company (adjusted for the two-for-one split-up effective December 27, 1956)		Common Stock of Pacific			
			Bid Prices		Asked Prices	
	High	Low	High	Low	High	Low
1955						
1st Quarter	23¼	19⅞	—	—	—	—
2nd Quarter	27¼	22¼	—	—	—	—
3rd Quarter	23-13/16	21¼	—	—	—	—
4th Quarter	24½	20⅝	27⅝	22	29¼	23¾
1956						
1st Quarter	24-13/16	22-1/16	29¼	27	30¾	28¼
2nd Quarter	26-3/16	21½	33¾	27	35⅝	28½
3rd Quarter	29¾	25-11/16	37	32¾	39	34⅝
4th Quarter	31-3/16	25¼	47	31½	49⅞	33½
January 2, 1957...	30-15/16	30½	47½	47	48¼	47⅛

On the basis of the January 2, 1957 market price for the Common Stock of the Company adjusted for the two-for-one stock split-up, and assuminug a discount of 5% in view of the fact that no dividends will be paid on the Common B Stock before January 1, 1958, the Company is offering stock having a pro forma aggregate market value of approximately $151,800,000 in exchange for the Common Stock of Pacific. There is, of course, no assurance that the Common B Stock issued upon the exchange will actually have this market value.

The following table sets forth the book equity of Pacific's Common Stock on a consolidated basis assuming conversion of its outstanding 5.6% Series B Interim Notes into Common Stock at the option of the holders of such notes. If Pacific's investments in the Common Stock of its subsidiary, Northwest Productiono Crporation, and in the Common Stock of Westcoast Transmission Company, Limited are valued at average market quotations on January 2, 1957 as shown in the table below, the resultant equity of Pacific's Common Stock in the pipe-

line net assets (at cost) plus the valuation at such average market quotations of the above investments totals

approximately $93,400,000. In this connection attention is directed to the annexed financial statements of Pacific.

		As of October 31, 1956
Gas Plant in Process of Construction, at original cost		$211,315,404
*Investments in Associated Companies		13,843,829
Current Assets		7,103,446
Deferred Charges (principally prepaid gas purchases)		4,763,949
Total Assets		$237,026,628
Less:		
Current Liabilities	$15,867,456	
Gas Sales Billed in Advance	545,225	
Long-Term Debt	167,829,000	
Interim Notes Payable in Preferred Stock	23,020,000	207,261,681
Remaining Common Stock Equity		$ 29,764,947
Book Value Per Pacific Common Share Outstanding and Subscribed (Assuming conversion of 5.6% Series B Interim Notes at the option of the holders of such notes there would be 2,991,973 shares outstanding and subscribed)	$9.95	

* Pacific's investment in associated companies at October 31, 1956 was as follows:

Name	Common Shares Owned	Per Cent of Voting Interest	Investment at Cost	Average Market Quotation Per Share on January 2, 1957 to Extent Available	Investment at Market Quotations on January 2, 1957 to Extent Available
Northwest Production Corporation	6,664,000	69	$ 6,672,526	6½	$43,316,000
Westcoast Transmission Company Limited	1,127,750	25	5,638,750	29	32,704,750
Phillips Pacific Chemical Company	490	49	1,472,450	—	1,472,450
Other			60,103	—	60,103
Total			$13,843,829		$77,553,303

At October 31, 1956, the book value per share of the Company's Common Stock (adjusted for the two-for-one split-up effective December 27, 1956) was $14.10, and the book value per share of Pacific's Common Stock outstanding and subscribed (assuming conversion of the 5.6% Series B Interim Notes by the holders thereof) was $9.95; if the investments by the Company and by Pacific in securities of other companies having market quotations are valued at their average market quotations on January 2, 1957 rather than at cost, the adjusted book value per share, as of October 31, 1956, was $15.18 per share for the Company and $31.24 per share for Pacific. On the basis of the average market quotations on January 2, 1957 for the Common Stocks of the Company and of Pacific, assuming a discount of 5% on the Common B Stock of the Company in view of the fact that no dividends will be paid on it before January 1, 1958, fourteen shares of Common B Stock would have a pro forma aggregate market value of approximately $406 as compared with a pro forma aggregate market value of $378 for eight shares of Common Stock of Pacific.

The earnings per share, after taxes, of the Company's Common Stock (adjusted for the two-for-one split-up effective December 27, 1956) were $1.56 during 1953; $0.93 during 1954; $1.53 during 1955; and $1.75 during the ten months ended October 31, 1956, all after the adjustments referred to in certain Notes to the annexed financial statements of the Company. Pacific had no earnings through 1956.

Since 1952 the Company has paid the following dividends per share on its Common Stock (adjusted for the two-for-one split-up effective December 27, 1956): During 1953 80¢ plus one share of common stock of Western Natural Gas Company for each 90 shares of Common Stock of the Company; during 1954 $1.00; during 1955 $1.00; and during 1956 $1.075. Pacific has paid no divi-

dends on its Common Stock. Neither the Company nor Pacific is in default in payment of principal or interest in respect of any of their outstanding debt obligations or preferred stocks.

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(Docketed July 25, 1958)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Notice of Consolidation and Fixing Date of Hearing

(July 25, 1958)

On August 7, 1957, Pacific Northwest Pipeline Corporation (Pacific), filed in Docket No. G-13018, an application, to which subsequent amendments have been filed, pursuant to Section 7 (b) of the Natural Gas Act, for permission and approval for the abandonment of its facilities subject to the jurisdiction of the Federal Power Commission, and the service rendered by means of such facilities, subject to El Paso Natural Gas Company receiving a certificate of public convenience and necessity as applied for in Docket No. G-13019 to acquire by merger these facilities and service rendered by Pacific. Due notice of the filing of this application has been given including publication in the Federal Register on October 1, 1957 (22 F.R. 7776-7).

On August 7, 1957, El Paso Natural Gas Company (El Paso) filed in Docket No. G-13019, an application, to which subsequent amendments have been filed, for a certificate of

public convenience and necessity pursuant to Section 7 (c) of the Natural Gas Act to acquire and operate the above-mentioned pipeline system of Pacific as presently constituted and as it may be enlarged or extended prior to the date of the proposed acquisition, including the right to construct any extensions, addition or other facilities which have been certificated prior to such date. Due notice of the filing of this application has been given including publication in the Federal Register on October 1, 1957 (22 F.R. 7776-7).

Take notice that the above-entitled proceedings are consolidated for hearing and pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and

Procedure, a hearing be held commencing on September 17, 1958, at 10 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., concerning the matters involved in and the issues presented by the above-entitled applications.

JOSEPH H. GUTRIDE
Secretary

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(Received Sept. 8, 1958)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Motion on Behalf of the Attorney General of the State of California to Stay Proceedings

Comes now the Attorney General of the State of California and moves for a stay of proceedings on the applications of El Paso and Pacific Northwest to consolidate their systems. Before applying to this Commission one applicant, El Paso, acquired the common stock of the other applicant, Pacific Northwest.

In support of said motion and as grounds therefor, the Attorney General states as follows:

1. That primary jurisdiction of the issues in the above-entitled cause is vested with the United States District Court for the District of Utah in that certain action entitled, United States of America v. El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, Civil No. 143-57, wherein is to be litigated the question of whether the acquisition by El Paso Natural Gas Company of the common stock of Pacific Northwest Pipeline Corporation is in violation of Section 7 of the Clayton Act.

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2. That any action of this Commission pertaining to said subject matter is premature and if taken will be repetitious and will not possess that degree of finality as will

exist after determination of this cause by the United States District Court for the District of Utah in the action referred to immediately hereinabove.

3. As a matter of comity the Federal Power Commission should recognize and defer to the court action presently pending in Utah to avoid duplication.

ARGUMENT IN SUPPORT OF MOTION

I.

The Attorney General of the State of California is an intervenor in the within proceeding pursuant to Order dated August 21, 1958. The Attorney General of the United States has filed an antitrust suit in the U. S. District Court of Utah which charges that El Paso's acquisition of the stock of Pacific Northwest violates Section 7 of the Clayton Act. The issues in that antitrust suit are of vital concern to determination of whether the public welfare is served by consolidation of the two pipelines. In order that those issues may be fully presented and resolved in the forum qualified to adjudge whether a violation has occurred, this Commission should decline at this time to proceed with the hearing. In such manner, the full presentation of factors bearing on the public interest will be possible. The Attorney General of the State of California therefore moves that the hearing scheduled to begin on September 17, 1958, before this

Commission be postponed until the question of violation of law charged in the antitrust suit has been resolved.

II.

The availability of expanded volumes of natural gas is of great importance to the State of California. Not only is natural gas one important basis for the economic

welfare of California industry, but because of the overwhelming reliance of the people on natural gas for heating, refrigeration, and other domestic, commercial and industrial uses, it has become an absolute necessity for the comfort and economic well-being of the citizens of our State. The State of California has a vital interest in any proceeding which can substantially increase our supply of natural gas at reasonable rates. California's need for natural gas is especially pertinent in this hearing because of our increasing dependence for out-of-state natural gas supplies on one pipeline, the applicant, El Paso. No market of anywhere near similar size is so completely dependent on one pipeline company.

III.

The Attorney General of the State of California opposes the present applications to consolidate. Applicants propose to create a vast monopoly of pipeline transmission systems in the Western States. Western natural gas consumers are forced to depend on one company for all out-of-state gas. We earnestly submit that consumers must have the protection afforded by the existence of at least two independent sources of natural gas. We believe that evidence to be introduced in the antitrust suit before the Federal

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Court in Utah will show the acquisition by El Paso of Pacific Northwest to be opposed to the interests of gas consumers, not only in California but in the other Western States as well.

El Paso's eminent counsel has stated that the antitrust issues raised by the acquisition are "original, significant and difficult ones." We agree. The interests of California gas consumers and all Western gas consumers are

vitally concerned with the enforcement of the antitrust laws against El Paso.

IV.

The stay of these proceedings is the only practical way to coordinate the activities of this Commission and the Attorney General of the United States in protection of the public interest. There is no question that both the Court and the Commission have jurisdiction of the matter pending before each. Coordination of jurisdiction in the interest of a prompt and just result is the problem here.

V.

As this Commission well knows, the dependence of California upon natural gas as a fuel for heating purposes and for generation of electricity is unique among the States in the United States. Because of the early abundance of natural gas and its relative cheapness and facility of use in comparison with oil, and because of the almost total lack of coal deposits, California early developed a broad public acceptance of natural gas as a fuel. Despite the decreasing quantities of California natural gas and the increased reliance on out-of-state supplies, the per capita

and per home use of natural gas has multiplied. Recent estimates indicate that in California the percentage of total energy provided by natural gas is substantially greater than for the nation as a whole (35 per cent California, 24 per cent nationally). Ninety per cent of all homes in California are heated by natural gas and the percentage of kitchen ranges, water heaters, clothes dryers, and other household appliances which operate by natural gas is considerably greater than anywhere else in the country.

California industry has, likewise, come to depend on natural gas as a fuel. For example, two-thirds of all

California steam electric plant fuel consumption is of natural gas.

It has been estimated that the projected increase in California's population from 13 million in 1955 to 18 million in 1965 and the similar striking growth forecast for California industry will multiply present requirements of out-of-state gas. Consumption of natural gas in California exceeded one trillion cubic feet in 1957. In recent studies prepared by the Chase Manhattan Bank of New York, dealing with the West Coast Petroleum Industry, it is estimated that over-all demand in 1966 in California, Washington, Oregon, Nevada, and Arizona for natural gas will approximate six billion cubic feet a day, 86 per cent more than was utilized in 1956. California consumption will account for a major portion of this increase. A Stanford Research study indicates that California's thermal requirements will increase 50 per cent between 1955 and 1965.

In comparison with this anticipated increase in over-all

demand, it is notable that only 3.4 per cent of the United States' total of natural gas reserves are located in California. During the last few years the estimated recoverable reserves of natural gas in California have declined significantly, from 9,161,341,543 Mcf in 1950 to 8,696,152,218 Mcf in 1957. On the other hand, the State's dependence on natural gas supplied from out-of-state reserves has increased tremendously. California was self-sufficient in 1947, but in 1950 28 per cent of California's consumption was of out-of-state natural gas. In 1956 out-of-state natural gas accounted for 67.6 per cent of total California consumption. Obviously, California must rely on out-of-state sources to meet all the future increased demand, as well as for making up the annual decrease in supplies formerly

available in California. It is against this factual background that the present proceedings must be viewed.

California natural gas consumers have always been and still are entirely dependent on El Paso for all out-of-state natural gas. Pacific Northwest tried hard in 1956 to break El Paso's monopoly of the California market for out-of-state gas and to become a second source of supply to the California market. But Pacific by reason of its ownership by El Paso no longer offers competition for this market. El Paso remains the sole supplier of out-of-state gas, and can expand gas service to California or not as it chooses. To a market growing as rapidly as California, this may mean no more than that additional gas will

be made available on El Paso's terms.

The State of California is vitally interested—as the largest consuming market in the West—in obtaining natural gas under optimum conditions for the consumer. We believe that evidence in the antitrust suit will show that El Paso and Pacific Northwest competed to sell gas to California. We believe that such competition was a potential benefit to gas consumers. It is the only method which will force interstate pipelines to exert maximum effort to maintain the availability of large quantities of gas at low prices. Accommodation to the consumer contrasts markedly with some of El Paso's prior actions—insistence before this Commission on a project deemed undesirable by the prospective customers—the warning that gas would be directed to more profitable markets. Without the safeguard provided by the existence of another company ready and willing to serve consumers in the area, there is no assurance that benefit to consumer will be as much a guide to the operations of a pipeline company as benefit to the stockholders of that pipeline company.

VI

The FPC was created for the purpose, and has the responsibility, of preventing pipeline companies from taking unfair advantage of the public. Every effort should be exerted to establish and preserve those conditions which assist the Commission in achievement of this purpose. In situations where

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there are opposing applications before the FPC, expansion of natural gas pipelines is subject to a weighing of comparative merit—the pipeline which offers consumers better service prevails. When there are no alternative proposals, the comparison of merit is, realistically speaking, often a choice between gas shortage and additional gas. We believe that evidence will be developed in the antitrust suit which reflects the competitive benefits of the separate operation of El Paso and Pacific. It is submitted that realistic assessment of the public welfare concerned in these applications requires consideration of such issues.

The competition referred to is not competition that could involve duplication of facilities or wasteful use of natural gas. This Commission can adequately deal with such situations whether one pipeline or two exists. Here we have two systems which have been proven before this Commission to be fully supported by reserves and markets. No duplication is involved. Pacific Northwest's plans for construction of a pipeline to California did not involve duplication—El Paso presently plans to build a pipeline connecting the Pacific Northwest System to California. Nor is separate operation of the two companies duplication—El Paso has any subsidiaries itself which operate separately from the parent, presumably with good reason.

The Attorney General of the State of California is not

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alone in suggesting that creation of one monster system for gas transmission in the West is opposed to the public interest.

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Representatives of the various Pacific Lighting group of companies and of an affiliate of the Pacific Gas and Electric Company have both recently testified that sources of natural gas, independent of the present supply, are in the public interest.

The issue concerning competition which has existed between El Paso and Pacific Northwest are of serious and far-reaching implication.

Under the circumstances here presented this Commission should not consider whether the proposed consolidation is consistent with the public welfare without a prior determination of their issues raised in the antitrust suit. It is urged that the Commission consider whether or not basic respect for the law enforcement responsibilities of the Attorney General of the United States— also charged to protect the public interest—does not require that this hearing be adjourned until there has been a decision as to the violation of the antitrust laws. The Attorney General is informed that a trial is expected this fall—surely that is not an unreasonable length of time to suspend these hearings.

Unnecessary conflict between law enforcement proceedings by this Commission and by the Attorney General of the United States should not be allowed to defeat the orderly and prompt resolution of the question of whether the control by El Paso of Pacific Northwest is legal or in the public interest. There is good reason why the antitrust suit should

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not be stayed. The antitrust evidence can properly be produced only in the District Court. This Commission

cannot give relief if the companies have violated the antitrust laws. Applicants asked the District Court to dismiss the antitrust suit but their motion was denied. The United States Supreme Court refused to review. This Commission, however, can stay its proceedings in order to coordinate resolution of whether consolidation of these pipelines is in the public interest. If the Commission proceeds, it is not unlikely that years of litigation may ensue involving—not the merits of the controversy—but conflict of jurisdiction. Nor is it impossible that the mere passage of time may serve to prevent enforcement of the law if a violation is subsequently determined to exist. The public can only lose if such a conflict arises.

VII

That it is applicants' purpose to create a jurisdictional conflict cannot really be questioned. Attention is invited to two circumstances of the applications by El Paso and Pacific to this Commission that can reasonably lead only to the conclusion that this was their purpose:

First: Although at the time of the stock acquisition or before, El Paso and Pacific Northwest could have requested the approval by this Commission of a consolidation of their two systems they chose not to do so. El Paso was advised by counsel prior to making the acquisition that the acquisition would not be immune from antitrust prosecution. Counsel even equiv-

ocated as to whether the acquisition was a *violation* of the antitrust laws. The proxy statement issued for the purposes of the stock acquisition indicated El Paso's intention to maintain separate operation of the two companies and gave several reasons why separate operation would benefit natural gas consumers and El Paso stockholders.

In the interim of time between the stock acquisition and the antitrust suit, no application was made to this Commission to consolidate the facilities of the two companies. On July 22, 1957, the Attorney General of the United States charged that the acquisition violated the antitrust laws. Within two days of advice by the Attorney General that a suit would be filed, each company's Board of Directors met and authorized the applications to this Commission which were made on August 7, 1957. Although both companies in their belated applications to this Commission describe at repetitive length the benefits to consumers which will result from consolidation, only the most naive observer can doubt that the real benefit planned to arise from these applications to the Commission is the benefit to El Paso envisioned in avoidance of the consequences of the antitrust suit.

Second: The applications by El Paso and Pacific Northwest further emphasize that applicants appear before this Commission to avoid enforcement of the antitrust laws. The consumer benefits claimed therein are not peculiar to consolidation of the two pipelines and their achievement is not dependent on reorganization of the corporate structure.

Extensive comment on these applications cannot make the situation clearer than it presently is. The Commission is charged with the heavy responsibility of protecting the public interest. But, as Chairman Kuykendall said in a letter to Senator Jackson, referring to the specific stock acquisition being considered in the District Court, any violation of the antitrust laws is a matter for which the Attorney General of the United States is primarily responsible. The antitrust questions which will be considered by the District Court will weigh heavily in any consideration of public benefit from consolidation of these

two pipeline systems. The Commission cannot ignore the existence of the antitrust suit—it must either be accorded the respect due enforcement of a law of the United States or this Commission must decide that the antitrust issues are not relevant to its consideration of the public welfare.

VIII.

It is submitted that the jurisdiction of the Court and Commission is compatible—and that the antitrust questions with which this Commission is not equipped to deal, but which are integral to any consideration of the public good, should reasonably be resolved first. Then, and only then, are all the factors bearing on the merits of these applications presented to this Commission. The California gas consumers constitute a large portion of the public upon whom these applications will have effect. It is earnestly requested, on their behalf, that the

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present hearing be adjourned to a date when the antitrust issues shall have been resolved.

Dated at San Francisco, California, this 2nd day of September, 1958.

EDMUND G. BROWN, *Attorney General of the State of California*

By /s/ WILLIAM M. BENNETT
WILLIAM M. BENNETT
Deputy Attorney General

(14755)

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

City of Pittsburgh v. *Federal Power Commission*, 237 F. 2d 741;

Pennsylvania Water and Power Co. v. *Federal Power Commission*, 343 U.S. 414;

In the Matter of Michigan-Wisconsin Pipe Line Company, 6 Fed. Power Comm. Rep. 1

Rules of Practice and Procedure—Federal Power Commission Section 1.12.

PLEADINGS FILED IN RESPONSE HERETO ARE REQUESTED TO BE SERVED UPON:

William M. Bennett,
Deputy Attorney General
600 State Building
San Francisco 2, California

Melwood W. Van Scoyoc
Public Utility Consultant
1009 19th Street, N. W.
Washington 6, D. C.

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State of California

City and County of San Francisco, ss:

WILLIAM M. BENNETT, being first duly sworn, deposes and says:

That he is a Deputy Attorney General of the State of California and as such is authorized to subscribe to the foregoing Motion on Behalf of the Attorney General of the State of California to Stay Proceedings; that he has read said Motion and knows the contents thereof, and

that the matters set forth in said Motion are true and correct to the best of his knowledge, information and belief.

/s/ WILLIAM M. BENNETT
WILLIAM M. BENNETT

Subscribed and sworn to before me this 3rd day of September, 1958.

IRENE PLATZ
Notary Public in and for the City and County of San Francisco, State of California

My commission expires May 6, 1962.

14757-14760

[Certificate of Service omitted in printing]

14785

(Docketed September 15, 1958)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck and John B. Hussey.

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Order Denying Motion for Stay of Proceeding

(Issued September 15, 1958)

On September 8, 1958, the Attorney General of the State of California filed a motion for stay of the above proceedings involving the application of Pacific Northwest Pipeline Corporation, under Section 7 (b) of the

Natural Gas Act, to abandon its facilities subject to the jurisdiction of this Commission and the service rendered by means of such facilities and the application of El Paso Natural Gas Company, under Section 7 (c) of said Act to acquire and operate such facilities.

These two applications were on July 25, 1958, consolidated for hearing to commence on September 17, 1958.

The grounds on which this motion rest is the pending suit entitled *United States of America*, Plaintiff v. *El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, Defendants*, civil case No. 143-57 in the United States District Court for the District of Utah, involving alleged violations of Section 7 of the Clayton Act. Heretofore by letter dated July 30, 1958, the Attorney General of California had requested that the commencement of the hearing be postponed until after October 11, 1958, for the purpose of study and preparation for his participation in the hearing. The Commission after considering the interests of all parties denied this request on August 18, 1958.

Conversely, the Public Utility Commissions of Washington, Oregon, Nevada and New Mexico, among other parties, have requested that the hearing on the merger applications commence at an early date, and it appears that an early hearing covering all of the issues involved by the above applications will be in the public interest, and that the aforesaid motions should be denied.

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The Commission orders:

The aforesaid motion filed by the Attorney General of the State of California, be and the same is hereby denied.

By the Commission.

/s/ MICHAEL J. FARRELL
MICHAEL J. FARRELL,
Acting Secretary.

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(Docketed Nov. 20, 1959)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Decision

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND UPON APPLICATION TO ABANDON FACILITIES

(Issued November 20, 1959)

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KELLY, PRESIDING EXAMINER: El Paso Natural Gas Company (El Paso) seeks, by its application in Docket No. G-13019, a certificate of public convenience and necessity from the Commission, pursuant to Section 7(c) of the Natural Gas Act (Act), authorizing it to acquire and operate all of the facilities and properties of Pacific Northwest Pipeline Company (Pacific), which are subject to the jurisdiction of the Commission. It proposes to acquire such facilities and properties by the merger of Pacific into El Paso, and to operate its own facilities and properties, together with those of Pacific, as a single integrated business and system for the production, acquisition by

purchase, processing, transportation and sale of natural gas in a large area of the western United States. Pacific has filed a companion application, Docket No. G-13018, by which it seeks permission and approval from the Commission, pursuant to Section 7(b) of the Act, to abandon all of its facilities certificated by the Commission, and the service rendered thereby, so as to effect its merger with El Paso as proposed, if the certificate of public convenience and necessity applied for by El Paso is granted by the Commission.

Both El Paso and Pacific are engaged in the transportation and sale for resale of natural gas in interstate commerce for ultimate public consumption. The necessary facts to constitute each Applicant a natural gas company within the meaning of the Act are averred in their applications and established by the evidence. The jurisdiction of the Commission to grant or deny these applications is not here questioned.

The original applications were both filed on August 7, 1957, and supplements thereto have since been filed with the Commission. A joint notice of the filing of the two applications was given by the Secretary of the Commission on September 25, 1957, and it gave opportunity for the filing of "protests or petitions to interfere" in the consolidated proceedings on or before October 31, 1957. On July 25, 1958, the Secretary gave notice of the consolidation of the dockets shown in the caption hereof and of the fixing of September 17, 1958 as the date upon which the hearing of these consolidated proceedings would begin before the Commission. This hearing was convened pursuant to said notice on September 17, 1958 and, after several recesses, was concluded on

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January 6, 1959. All parties to these proceedings were given opportunity to participate in the hearing and to file

briefs in support of their respective positions; and briefs have been received from the Applicants, the Staff of the Commission and certain interveners, the final briefs from the Applicants having been received on June 1, 1959.

Each State in which either El Paso or Pacific owns and operates facilities for the transportation and sale of natural gas, or in which are located purchasers from them of natural gas for resale, was represented by an intervener in these proceedings. Each such State is listed below with its intervener representative:

Arizona, by its Attorney General
California, by its Attorney General
Colorado, by The Public Utilities Commission thereof
Idaho, by Idaho Public Utilities Commission
Nevada, by Public Service Commission thereof and its Attorney General
New Mexico, by New Mexico Public Service Commission and its Attorney General
Oregon, by its Public Utility Commissioner
Texas, by its Attorney General
Utah, by Public Service Commission thereof
Washington, by Washington Public Service Commission
Wyoming, by its Attorney General

Interveners which purchase natural gas transported and sold by El Paso are as follows:

Southern California Gas Company and Southern Counties Gas Company of California, jointly
Southern California Edison Company
Pacific Gas and Electric Company
Southern Union Gas Company

Interveners which purchase natural gas transported and sold by Pacific are as follows:

Colorado Interstate Gas Company
Colorado-Wyoming Gas Company
Mountain Fuel Supply Company

Intermountain Gas Company
Natural Gas Pipeline Company of America
Northwest Natural Gas Company (formerly Portland Gas and Coke Company)
Public Service Company of Colorado
Washington Natural Gas Company
The Washington Water Power Company

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The City of Los Angeles, California intervened as a purchaser of natural gas from a customer of El Paso, and also as a representative of its residents and citizens who are consumers of such natural gas. J. W. Greenough intervened as the owner of capital stock of Pacific.

El Paso and Pacific filed on February 16, 1959, their joint initial brief in support of their applications. All interveners desiring to file briefs in support of the approval of the merger by the Commission, with or without conditions, were required to do so by March 16, 1959. The interveners who filed briefs in support of the merger without conditions were the representatives of the States of Arizona, Idaho, Nevada, New Mexico, Texas, Washington and Wyoming and the Northwest Natural Gas Company. Approval of the merger, with conditions imposed, was supported by the briefs of Pacific Gas and Electric Company, Southern Union Gas Company, Southern California Gas Company, and Southern Counties Gas Company of California, the last two filing a joint brief. Briefs were filed on April 20, 1959 by the Commission Staff and the Attorney General of California, both opposing the approval of the merger by the Commission. Reply briefs by all except the Applicants were required to be filed by May 22, 1959, and such were filed by Pacific Gas and Electric Company, Northwest Natural Gas Company, and the rep-

resentative of the State of Oregon.[1] The joint reply brief of El Paso and Pacific was filed, as required, on June 1, 1959.

From the foregoing it may be seen that all of the interveners did not file briefs. There were nine interveners who merely showed by the averments of their petitions that they had such interest in these proceedings as entitled them to be granted intervention, and they took no definite position at any time for or against the merger.[2] While filing no briefs, Washington Natural Gas Company and Washington Water Power Company, through oral statements of counsel and the testimony

of witnesses offered by them at the hearing, took a definite position in support of the merger. Counsel for Intermountain Gas Company stated orally at the hearing that his company appeared in support of the proposed merger. J. W. Greenough who intervened as a stockholder of Pacific, opposed the merger in his petition to intervene but he made no appearance at the hearing and offered no evidence of the facts averred therein as the basis of his opposition.

There were 23 days of hearing between September 17, 1958 and January 6, 1959, largely consumed by the direct and cross-examination of the witnesses for the Applicants. In addition to that of the Applicants, testimony was given in support of the applications by Northwest Natural Gas

[1] The Public Utility Commissioner of Oregon did not file an initial brief and the brief filed by him on May 22, 1959, in support of the merger, was not in the nature of a reply brief.

[2] The nine are: Public Utility Commission of Colorado; Public Service Commission of Utah; City of Los Angeles; Colorado Interstate Gas Company; Colorado Wyoming Gas Company; Public Service Company of Colorado; Mountain Fuel Supply Company; Natural Gas Pipe Line Company of America; and Southern California Edison Company.

Company, Washington Natural Gas Company, and The Washington Water Power Company. Testimony was also given by witnesses for the Staff of the Commission, for Pacific Gas and Electric Company, and jointly for Southern California Gas Company and Southern Counties Gas Company of California. There were received in evidence 429 exhibits, and 71 items of evidence were incorporated into the record by reference to them in the files of the Commission. The evidence so received at the hearing is exclusively the basis of the decision upon the issues here made. Any statements made herein which show merely which parties favor or oppose the merger, whether by brief or otherwise, are for the sole purpose of showing which parties presented issues here for decision. Mere conclusionary statements, for or against the merger, made by parties or witnesses at any point in the record, which are not supported by substantial record evidence, were not permitted to have any bearing upon the decision here made.

The applications state clearly the grounds relied upon by the Applicants to support their respective prayers therein for a certificate authorizing El Paso to acquire by merger and operate the properties of Pacific, and for permission to Pacific to abandon its properties so as to effect such merger. The grounds for the granting of the applications stated in the briefs of the Applicants are substantially the same as those averred in the applications. The positions taken by the Staff and the Attorney General of California (California) in opposition to the granting of such authority and permission are not set forth fully except in the briefs of these parties. Those seeking to have conditions imposed upon the issuance of the certificate to El Paso, have likewise stated their positions fully only in their briefs. Thus, the briefs have been looked to largely for definitions of the issues raised by those who oppose, or who would condition, the granting of the authority sought by the Applicants.

Section 7(c) of the Act provides definitely that no natural gas company shall acquire or operate any facilities for the transportation or sale of natural gas, subject to the jurisdiction of the Commission, without first having obtained from the Commission a certificate of public convenience and necessity authorizing such acquisition or operation.[3] As hereinbefore shown, El Paso, a natural gas company, has filed application to acquire and operate all of the facilities of Pacific, also a natural gas company, which are subject to the jurisdiction of the Commission. Section 7(e) of the Act provides that a certificate of public convenience and necessity authorizing the acquisition and operation of facilities, subject to the jurisdiction of the Commission, shall be issued by the Commission to any qualified applicant therefor, who is found to be able and willing properly to perform the acquisition and operation proposed by him and to conform to the provisions of the Act and lawful regulations thereunder; provided, that such acquisition or operation "is or will be required by the present or future public convenience and necessity." The record evidence shows clearly that El Paso is able and willing properly to perform the acquisition and operation of the facilities of Pacific and, in so doing, to conform to the provisions of the Act and lawful regulations thereunder. Therefore, the really basic issue here presented is whether the public convenience and necessity require the issuance of a certificate authorizing El Paso to acquire and operate the facilities of Pacific, together with its own facilities, as an integrated pipeline system, as proposed in its application. Pacific, of course, seeks to be merged into the El Paso corporation.

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[3] 15 U.S.C. Sec. 717f(c).

The burden is squarely upon El Paso to establish, by substantial evidence, the affirmative of the issue of whether the merger here under consideration is required by the public convenience and necessity. This would be true, under the Act, even though there had been no opposition to the merger. The reasons advanced in opposition to the merger must be weighed in relation to this issue; and it must be determined whether, in spite of such reasons, the public convenience and necessity still require the granting by the Commission of the certificate sought. The same is true with regard to the reasons advanced for attaching conditions to the certificate authorizing the merger; and it must be determined whether the public convenience and necessity require the issuance of the certificate with or without the proposed, or other, conditions. Of course, it must be shown by the evidence, that reasons advanced for opposing the certificate, or attaching conditions thereto, have their bases in fact. In making the decision as to the requirements of the public convenience and necessity in the premises here, all factors of consequence presented in this record, bearing affirmatively or negatively upon this issue, have been fully considered.

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The Two Corporations

El Paso Natural Gas Company

El Paso is a Delaware corporation with its principal place of business in El Paso, Texas. Organized in 1928, its first transmission facilities, about 200 miles in length and with a capacity of 36,000 Mcfd,[4] were completed and put in operation in 1929, with its principal market El Paso, Texas and environs. The first certificate of public convenience and necessity issued to El Paso by the Com-

[4] Mcfd is used herein to mean "thousands of cubic feet daily."

mission was by order of January 11, 1944, made pursuant to the "grandfather" clause of Section 7(c) of the Act as amended, which recited that El Paso was engaged in the purchase of natural gas in New Mexico, and in the transmission and sale thereof in Texas, New Mexico and Arizona.[5] Prior to its expansion to supply its additional markets, El Paso had in 1945 a capitalization of less than $40 million.

By authority of the Commission given in a certificate of public convenience and necessity of May 31, 1946, El Paso entered the California natural gas market.[6] It was authorized to construct and operate a natural gas pipeline with appurtenant facilities, extending approximately 1,000 miles from Dumas, Texas to the Arizona-California border, near Blythe, California, and to transport and sell natural gas to the Southern California Gas Company and the Southern Counties Gas Company of California (Southern California Companies), in accordance with a contract with these companies for the delivery at the end of 4 years of up to 305,000 Mcfd, for a period of 30 years. The Commission opinion granting this certificate stated that the sale of natural gas to these purchasers was "for resale to ultimate consumers in California through existing local distribution facilities", located in southern California. The greater portion of this gas supply was to be residue gas produced in the Permian Basin in west Texas and southeast New Mexico, and the remainder was to be dry gas produced in the Hugoton and Panhandle fields of Texas.

On February 28, 1949, the Commission issued to El Paso a certificate of public convenience and necessity authorizing it to transport and sell to Pacific Gas and Electric Co. (PG&E) 250,000 Mcfd. The facilities then authorized to

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[5] 4 FPC 486, Docket No. G-238.

[6] 5 FPC 115, Docket No. G-655.

be constructed and operated were described in the Commission order; and they effected "a complete looping" of El Paso's then existing main transmission line from Texas to a point where a lateral pipeline

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would be constructed in a generally northerly direction to transport the natural gas for delivery to PG&E at the Arizona-California border near Topock, Arizona. According to the Commission order, this lateral was to be connected to the main transmission line at a point about 45 miles east of the delivery point to the Southern California Companies near Blythe, California. El Paso's contract with PG&E required it to deliver 150,000 Mcfd by January 1, 1951, for a period of 20 years, and to deliver an additional 100,000 Mcfd by January 1, 1952 for a period of 15 years. El Paso was required also to use its best efforts to make deliveries of these two quantities of gas for additional periods beyond the original contract terms. This gas was to be delivered to PG&E for its own use, for sale to consumers, and for sales for resale. PG&E serves central and northern California. The deliveries required by the contract were to be from production in the Permian Basin, supplemented by dry gas from the Panhandle and Lea County fields.

These first sales by El Paso to the Southern California Companies and to PG&E, as authorized respectively in Dockets G-655 and G-1019, were the beginning of El Paso's expansion from a capitalization of less than $40 million, when it received its first certificate from the Commission, to a present capitalization, with its subsidiaries, of about $1 billion; and from a main pipeline of about 200 miles to existing main transmission lines in excess of 6700 miles. As the California market for natural gas expanded, El Paso expanded its transportation facilities in an effort to meet the ever increasing demands of that market. While

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El Paso has important markets in west Texas, New Mexico, Arizona and Nevada, it may very surely be found from this record that the great growth of the El Paso system has been due very largely to the rapid expansion of the California market for natural gas from sources outside of the State. From the time that California's own supply of natural gas had diminished to the point where it no longer was adequate to meet the demands of the California consumers, thus requiring out-of-state supplemental supplies of natural gas, El Paso has been, and is now, the sole supplier of such supplemental gas to the State of California.

The certificates of public convenience and necessity issued successively by the Commission over the years authorizing the construction and operation of main transmission facilities for major sales of natural gas on the El Paso System, are listed by docket number and brief description in El Paso's original application in Docket No. G-13019. The evidence shows that the present certificated delivery capacity of the El Paso System is roughly 2,700,000 Mcfd, and that of this capacity approximately 1,030,000 Mcfd are for the Southern California Companies and approximately 1,025,000 Mcfd are for PG&E. This shows that more than three-fourths of El Paso's presently certificated capacity is for its three customers in California. The bulk of El Paso's transported gas is sold for resale and its direct sales are relatively unimportant .

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The brief of the Applicants describes El Paso's main transmission facilities as consisting of the so-called "Permian" or "Southern System" and the so-called "San Juan" or "Northern System" which, together with numerous connecting pipelines and laterals, constitute El Paso's integrated pipeline system. The Southern System was the first to reach the California border for the original delivery

to the Southern California Companies, and later to PG&E, authorized respectively as shown above in Dockets Nos. G-655 and G-1019. As discussed hereinafter, the Commission authorized the construction and operation of El Paso's Northern System to enable it to have in the San Juan Basin a source of dry natural gas to balance its utilization of residue gas from the Permian Basin. The bulk of the gas transported and sold by El Paso is produced in these two basins, but it obtains gas from Canada and other fields in this country through purchase and exchange agreements with other pipeline companies.

El Paso's Southern System extends from the Permian Basin located in western Texas and southeastern New Mexico, to its western terminus near Blythe, California; and the main transmission facilities thereof are two parallel pipelines of large diameter from which project numerous lateral pipelines serving cities and communities in western Texas, southern New Mexico and southern Arizona. The Northern System extends from the San Juan Basin located in northwestern New Mexico and southwestern Colorado in a westerly direction to its terminus near Topock, Arizona. The main transmission facilities thereof consist of three parallel pipelines of large diameter from which project shorter pipelines and laterals to serve cities and communities in northern New Mexico and northern Arizona. The Southern System and the Northern System are interconnected by two single large-diameter pipelines in western Arizona. The two systems are likewise connected by a partially looped pipeline of large diameter, extending from its point of connection with the Southern System, in western Texas near the New Mexico border, in a northwesterly direction to a point in the Northern System near its eastern terminus at the San Juan Basin. El Paso also owns a pipeline of large diameter which is connected to its main system in the Permian Basin and extends in a northerly direction to a point in the Panhandle field in western

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Texas; but this line is used to transport gas on an exchange basis for Northern Natural Gas Company. By means of these connecting pipelines, the two El Paso Systems, with their other transmission facilities, are operated as a single integrated pipeline transmission system.

There is pending before the Commission El Paso's application in Docket No. G-16235, for a certificate authorizing it to construct and operate a 34-inch pipeline, approximately 400 miles in length, from a point near Thistle and Provo, Utah, to the California-Nevada border, at a point southwest of Las Vegas, Nevada. This proposed pipeline has been referred to in the record as the Provo-Las Vegas project. At its northern terminus it will connect with a pipeline to be constructed and operated by Colorado Interstate Gas Company, which will be about 140 miles in length with its northern terminus at a point in the main pipeline of Pacific near Rock Springs, Wyoming. By an agreement of July 18, 1958, Pacific will

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deliver at this point a maximum of 235,000 Mcfd; and Colorado will deliver there a like quantity and transport the total of 470,000 Mcfd to the northern terminus of El Paso's Provo-Las Vegas pipeline. This gas will be sold and delivered at the California-Nevada border to the Southern California Companies, who will then transport it to their markets in Southern California. This pipeline will not be connected to El Paso's existing main pipeline system hereinbefore described.

By an Examiner's decision of February 26, 1959 upon its application in Docket No. G-13862, now pending before the Commission on exceptions, El Paso is authorized to construct and operate a pipeline from Aneth Field in the Four Corners area[1] to a point in its main transmission line,

[1] This is the area around the meeting of the corners of the States of Utah, Colorado, Arizona and New Mexico.

a short distance downstream from its San Juan Basin plant. Still another project of El Paso is before the Commission upon exceptions to the Examiner's decision of May 12, 1959, in Docket No. G-12580. In this proceeding, El Paso seeks authority to construct and operate certain facilities and to sell to Southern California Edison Company (Edison) 100,000 Mcfd for use as boiler fuel. In Docket No. G-15696, El Paso seeks authority to construct and operate facilities for delivery to PG&E at Topock, Arizona, 100,000 Mcfd of additional natural gas.

In order to meet the ever increasing natural gas requirements of its customers, El Paso has acquired leasehold rights, interests, and wells in the Permian and San Juan Basins and in the Texas Panhandle Fields; and from these it produces natural gas which materially adds to its gas reserves, which it controls under gas purchase contracts with other producers. For some years El Paso has been engaged in an extensive program of exploration and development in the above areas and elsewhere, which has increased substantially its overall gas reserves with which to meet its market requirements. El Paso likewise processes gas and sells at wholesale the extracted products.

Pacific Northwest Pipeline Corporation

Pacific is a Delaware Corporation with its principal place of business in Salt Lake City, Utah. It was first authorized by the Commission on June 18, 1954, to engage in the transportation and sale of natural gas in interstate commerce. Commission Opinion No. 271 of that date ordered that a certificate of public convenience and necessity issue to Pacific authorizing it to construct and operate the pipeline and the other facilities proposed in its application in Docket No. G-1429. This authorized natural gas transmission line had its southern terminus at Ignacio, Colorado and in the northern part of the San Juan Basin of southwest Colorado and northwest New Mexico. From there its generally northwesterly

course was through the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington, to its northern terminus near Bellingham in northwest Washington near the Canadian border. Upon the applications of Pacific in Dockets Nos. G-8932, G-8933 and G-8934, the Commission authorized on November 25, 1955, in its Opinion No. 289, that the capacity of the northern section of this pipeline be enlarged and extended to the Canadian border near Sumas, Washington, for the importation of natural gas at this point. By the acceptance of the certificates issued by Commission Opinions Nos. 271 and 289, and the construction and operation of the authorized pipeline and facilities, Pacific became a natural gas company subject to the jurisdiction of the Commission.

In addition to this main pipeline from Ignacio, Colorado to Sumas, Washington, Pacific has lateral pipelines of varying lengths projecting therefrom to certain markets and to sources of gas supply. Filed as a part of Exhibit 6 in this record, is a map of the systems of both El Paso and Pacific, which shows in considerable detail their respective main pipelines, lateral lines, and other facilities. This map shows for both systems the completed facilities, the facilities certificated by the Commission but not yet installed, and certain facilities for which are pending applications before the Commission. Pacific has approximately 2125 miles of main and lateral pipelines. The capacity of the Pacific system is approximately 646,000 Mcfd, but its sales for 1958 were estimated to average only about 500,000 Mcfd. In addition to its sales to distributing companies and industrial customers, Pacific sells natural gas to Colorado Interstate Gas Company (Colorado), and Mountain Fuel Supply Company (Mountain Fuel), both pipelines subject to the jurisdiction of the Commission. The sales and exchanges of natural gas between Pacific and El Paso are discussed hereinafter.

The natural gas transported through this pipeline is authorized to be sold in all of the states traversed by it, to distributing companies for resale and to industrial customers along its route. Commission Opinion No. 271 had the following to say about the Pacific Northwest of the United States which would be served by Pacific:

> The Pacific Northwest is the one remaining large area of this country with a great need for natural gas but which is still without this highly desirable fuel and raw material. It is a section where great industrial expansion has occurred and is still in progress, and one which has played and continues to occupy a very important role in the National defense. The record amply demonstrates that it has a real desire and need for natural gas.

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The completion of the initial financing of the Pacific project was accomplished early in May, 1955 and the actual construction of the certificated facilities was begun in June, 1955. While pipeline construction advanced to the point that deliveries of gas to some customers were made as early as August, 1956, the main transmission facilities were completed in December, 1956.

Pacific produces natural gas from its own leaseholds and purchases gas from other producers in the San Juan Basin and in various fields of the Rocky Mountain area; and it purchases natural gas from Westcoast Transmission Company, Ltd. (Westcoast, Ltd.) at the Canadian border which is produced in northern British Columbia and Alberta. It thus has sources of supply at both ends of its main transmission line and as well along the route thereof.

In Commission Opinion No. 271 it was stated that the estimated cost of the facilities authorized thereby to be constructed by Pacific, was $160 million; but in Opinion No. 289 it was found that Pacific's estimated capital struc-

ture would be $184,963,000. However, Pacific avers in its application here that its total plant investment is in excess of $225 million, and this takes into consideration its plant at the time the application was filed on August 7, 1957.

Relations Between the Corporations

Westcoast Transmission Company, Inc. (Westcoast, Inc.), a Delaware corporation, was one of the companies competing for the unserved Pacific Northwest natural gas market, in the proceeding in which was issued Commission Opinion No. 271 which granted the application of Pacific to serve this area, and denied all other such applications. Westcoast, Inc. was the wholly-owned subsidiary of Westcoast Transmission Company, Ltd. (Westcoast, Ltd.), a Canadian corporation, which had extensive supplies of natural gas in the Peace River area of British Columbia and Alberta, Canada. Westcoast, Inc. instituted suit to review Opinion No. 271, but this litigation was voluntarily dismissed in December of 1954 after Westcoast, Ltd. entered into an agreement with Pacific for the sale to it of natural gas at the Canadian border. As a part of this transaction between Westcoast, Ltd. and Pacific, the latter acquired 25 percent of the former's common stock.

Pacific did not have a sufficiently large market in 1954 to justify the importation of Canadian gas. The management of El Paso decided then that it would be practical to utilize facilities of Pacific, together with its own, to bring Canadian gas to the California market. On December 11, 1954, Pacific entered into an agreement with Westcoast, Ltd. for the purchase of 300,000 Mcfd at the Canadian border near Sumas, Washington, and on the same date contracted with El Paso to sell to it 250,000 Mcfd of this Canadian gas at Mountain Home, Idaho. It was the

plan of El Paso to construct a transmission line from this point to a point in the Nevada-California boundary near

Reno, Nevada, and there to deliver the gas to PG&E. However, PG&E would not agree to accept gas from El Paso except at Topock, Arizona and this plan, for which authorization was sought in El Paso's original application in Docket No. G-8940, was abandoned.

The contract of December 11, 1954 between El Paso and Pacific was revised on August 23, 1955 to provide that El Paso would take 50,000 Mcfd of Canadian gas, to be delivered to it on an exchange agreement at Pacific's processing plant at Ignacio, Colorado; and further to provide that Pacific might require El Paso to take another 50,000 Mcfd in the same manner. On November 25, 1955, the Commission issued Opinion No. 289 which authorized Pacific to increase the capacity of the northern section of its pipeline system to receive the 300,000 Mcfd from Westcoast, Ltd. It should here be commented, as was done in Opinion No. 289, that Pacific's "primary load obligations" are at the northern end of its system. Of course such obligations of El Paso are in the California market and this exchange of gas is advantageous to both parties. El Paso has a 24-inch pipeline by means of which it is now receiving 101,000 Mcfd of such exchange gas at Pacific's Ignacio plant which it transports to its own plant in Blanco, New Mexico, a distance of approximately 35 miles.

Pacific Gas Transmission Company (PGT) filed application with the Commission on December 29, 1958, in Docket No. G-17350, for authority to construct and operate a 36-inch pipeline for the transmission of natural gas from a point on the Canadian border near Kingsgate, British Columbia, to a point in the California-Oregon border near Klamath Falls, Oregon, a distance of about 600 miles. The greatest portion of the gas to be transported through this pipeline will be sold to PG&E at the California border. In addition to the transportation of gas for sale to PG&E, PGT will also transport approximately 150,000 Mcfd of natural gas for Pacific from the Canadian boundary to a

point in the vicinity of Spokane, Washington, and to such other points within the States of Idaho, Washington and Oregon as may be designated by Pacific. This gas, produced in Alberta, is to be obtained by Pacific from Westcoast, Ltd., a Canadian corporation. The former President of Pacific testified that the purchase of this additional quantity of Canadian gas was only feasible because the gas could be transported and sold to El Paso for delivery to Southern California Companies by means of the Provo-Las Vegas pipeline.

Pacific and El Paso entered into an agreement on June 5, 1956, whereby they agreed to use jointly their combined gathering facilities in the San Juan Basin. The agreement also provided for deliveries to each, on an exchange basis, of natural gas from wells of the other located, respectively, closer to the transmission facilities of each. This arrangement brought about the avoidance of unnecessary construction of gathering facilities in the Basin. It is estimated that Pacific made a capital saving of about $4,500,000 as a result of this agreement and that El Paso

realized a saving in excess of $250,000. On June 15, 1956, another agreement between these parties was entered into whereby El Paso made available to Pacific gas from the San Juan Basin which was temporarily in excess of its requirements, which loaned gas was to be returned to El Paso by Pacific by the delivery of equivalent quantities in the future. Through these loans of gas, Pacific was enabled to obtain early deliveries of gas into its pipeline system and also to reduce substantially its program for immediate production of gas and to spread its drilling expenditures over a longer period of time. The Provo-Las Vegas project of El Paso has been discussed herein, and it was shown that the 470,000 Mcfd of natural gas supply therefor was to be obtained one-half from Pacific and one-

half from Colorado. There are likewise other arrangements between the two companies in their activities in the San Juan Basin which are mutually beneficial. After the acquistion by El Paso of the Pacific common stock, an agreement of May 22, 1957, was made whereby El Paso took over the operation and maintenance of all Pacific properties, including its gathering system, in the San Juan Basin, and also the operation of Pacific's Ignacio plant. Other existing relationships between El Paso and Pacific are hereinafter discussed in relation to the issue of the public interest.

The Proposed Merger

El Paso's Acquisition of Pacific's Stock

Its President testified that El Paso first became interested in the acquisition of Pacific's common stock about the time El Paso contracted with Pacific to buy from it 250,000 Mcfd of Canadian gas in connection with the Mountain Home project herein before discussed.[8] Discussions concerning this acquisition began at about that time between El Paso and Pacific and continued until March or April, 1955, during which time the personnel of El Paso was making studies of the Pacific system. In these first discussions, El Paso insisted upon making an application to the Commission under Section 7(c) of the Act for authority to effect the merger, but Pacific would not agree to this procedure because it did not want to be engaged in a proceeding under Section 7(c) at that time, which was prior even to the completion of the financing required for the construction of its pipeline.

There was a resumption of the discussions for this stock acquisition later in 1955 and a letter of December 14, 1955 from El Paso's President to the Board Chairman and the President of Pacific, offered to make a tax-free exchange

[8] Contract of December 11, 1954.

of five shares of El Paso stock for each nine shares of Pacific stock. There were conditions specified in this letter among which was that however the acquisition of Pacific's properties was effected, Commission approval of it under Section 7(c) of the Act would be required. El Paso's offer was again rejected by Pacific largely because it did not want to go through such a proceeding before the

Commission during what it regarded as "a critical period in the Corporation's existence, *i. e.*, during the period it was organizing its personnel and preparing for the commencement of gas sales." These negotiations ended in February, 1956.

The negotiations were resumed in August 1956 and continued through October 1956. El Paso still preferred, during these negotiations, to acquire Pacific's properties through a proceeding under Section 7(c) of the Act to obtain Commission approval of the acquisition. However, Pacific's officials would not yield, and insisted upon the tax-free stock exchange. Finally El Paso agreed to such an exchange of stock and entered into a contract dated November 8, 1956 with the principal stockholders of Pacific for the acquisition of Pacific stock on this basis. On January 8, 1957, the formal offer was made to Pacific's stockholders to exchange their stock for shares of the stock of El Paso; and by the end of that month more than 80 percent of the shares of Pacific's stock had been tendered for exchange. When this offer of exchange was closed on May 1, 1957, El Paso had acquired 99.8 percent of the outstanding stock of Pacific.

El Paso's President testified that the primary purpose for the acquisition of the common stock of Pacific was to gain access to the vast and relatively untouched Canadian gas reserves for El Paso's markets, and that the next purpose in importance was gaining access to the reserves of

the Rocky Mountain area. It is found hereinafter that the attachment to El Paso's expanding markets of these two great sources of natural gas is definitely in the public interest.

Merger Under Delaware Law

In Section 7 of El Paso's application, appears its "Plan of Acquisition: The Proposed Merger of Pacific Into El Paso." Under this caption it is shown that the merging of the corporate entity of Pacific into that of El Paso will be accomplished by the procedures prescribed by Section 253 of the Delaware General Corporation Law. In support of the averments made in this section of the application, El Paso presented the testimony of its Financial Vice-President, in which were given in considerable detail the procedures which would be followed to accomplish the merger under Delaware law.

Beginning at page 10 of the original joint brief of the Applicants, filed February 16, 1959, there appears a discussion of the testimony of this witness concerning the legal procedures which will be taken by El Paso to accomplish the merger in compliance with Delaware Law. There is hereinafter issued to El Paso a certificate of public convenience and necessity authorizing the acquisition of Pacific's facilities, subject to the jurisdiction of the Commission, under Section 7(c) of the Act; and there is attached to the issuance of this certificate a condition that the acquisition of facilities authorized in the certificate be

accomplished pursuant to Section 253 of the Delaware General Corporation Law. This condition is attached to the issuance of the certificate under the authority of Section 7(e) of the Act, and the acceptance of this condition by El Paso will assure that all obligations of Pacific of whatever

kind or character will be assumed by El Paso as required by this Delaware law.

El Paso now owns, according to the evidence, 99.85 percent of the total outstanding shares of Pacific's common stock. Fourteen shares of El Paso's Common B Stock have been exchanged for each 8 shares of Pacific's common stock. The outstanding shares of Pacific's common stock now in the hands of the public will be acquired on the same basis, or as otherwise provided by Delaware law and all common stock of Pacific will then be cancelled.

All outstanding preferred stock of Pacific will be called, prior to the consummation of the merger, at the redemption prices provided; and the necessary funds for this acquisition will be obtained by El Paso through a bank loan and from working funds of Pacific. Pacific is now indebted to El Paso in the sum of $15,000,000, evidenced by an unsecured 5 percent promissory note, which it will pay prior to the effectuation of the merger by the issuance to El Paso of one share of its common stock for each $30 of the principal amount of the note. This loan was made by El Paso to Pacific pursuant to the stock exchange agreement of November 8, 1956 and the stock issued by Pacific in payment of the note will be cancelled along with all other common stock of Pacific at the time of the effectuation of the merger. All indebtedness between El Paso and Pacific will be cancelled and all obligations of Pacific will be assumed by El Paso as provided by Delaware corporation law. Discussions have been had with the principal holders of the mortgage bonds of Pacific, who have expressed their willingness to exchange their Pacific bonds for El Paso bonds bearing the same interest rates, maturities and sinking fund provisions.

It is shown definitely that, under El Paso's proposed plan of merger, El Paso will assume every obligation of Pacific just as though it had been originally incurred by it;

and the acceptance of the certificates hereinafter granted to it will impose upon it all obligations of Pacific to perform all services for which Pacific now holds certificates from the Commission.

Operation of Integrated System

Upon the accomplishment of the merger, the corporate entity of Pacific will be extinguished and El Paso will own and operate its facilities with those of Pacific as a single integrated pipeline system. The operation of the unified system will be under one central management. The natural gas reserves of both companies will be available to all existing customers of both companies, either directly or by displacement, under

central supervision and direction. All contracts for sales to the present customers of both companies will be performed by El Paso with prices for natural gas remaining the same under the respective tariffs of the two companies now in effect, subject to change in the future only under the provisions of the Act and regulations by the Commission. The proposed plans of El Paso for the operation and management of the integrated system are hereinafter discussed in great detail in relation to the issues pertaining to the public interest.

THE CLAYTON ACT

On July 22, 1957, there was brought in the name of the United States of America, by its Attorney General, a civil action in the United States District Court for the District of Utah to prevent and restrain the violation of Section 7 of the Clayton Act by El Paso and Pacific, the defendants named in the complaint. The acquisition by El Paso of more than 99 percent of the outstanding shares of Pacific's

common stock was charged to be a violation of the Clayton Act, in that the effect thereof would be substantially to lessen competition or tend to create a monopoly. An adjudication of such a violation was sought from the Court and the complaint contained a prayer that El Paso be required to divest itself of the common stock of Pacific under such terms and conditions as the Court might prescribe.

On September 8, 1958, the Attorney General of California (California) filed a motion for a stay of the proceedings in these two consolidated dockets, the hearing of which was to begin on September 17, 1958. The motion asserted that the "primary jurisdiction" of the issues here was vested in the United States District Court for the District of Utah, in which was pending the civil action described above. The motion asserted that "any action of this Commission pertaining to said subject matter is premature and if taken will be repetitious and will not possess that degree of finality as will exist after determination of this cause," by said Court; and that "as a matter of comity the Federal Power Commission should recognize and defer to the Court action presently pending in Utah to avoid duplication." Following these assertions is an extensive argument urging that the hearing here "be adjourned to a date when the anti-trust issues shall have been resolved." By order issued September 15, 1958, the Commission denied California's motion. This Order contained the following:

> The grounds on which this motion rest is the pending suit entitled *United States of America*, Plaintiff v. *El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation*, Defendants, civil case No. 143-57 in the United States District Court for the District of Utah, involving alleged violations of Section 7 of the Clayton Act. Heretofore by letter dated July 30, 1958, the Attorney General of

California had requested that the commencement of the hearing be postponed until after October 11, 1958, for the purpose of study and preparation for his participation in the hearing. The Commission after considering the interests of all parties denied this request on August 18, 1958.

At the time of the commencement of the hearing here on September 17, 1958, a pre-trial conference was scheduled for November 3, 1958, in the civil action aforesaid. The Applicants here, the defendants to said civil action, filed on October 2, 1958, a motion in the said District Court for a continuance of the trial of said civil action, and the motion was heard on October 10, 1958. On October 13, 1958, the following Order was entered by said Court postponing without date the trial of the civil action before it:

"IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION
UNITED STATES OF AMERICA, *Plaintiff*

v.

EL PASO NATURAL GAS COMPANY AND PACIFIC NORTHWEST
PIPELINE CORPORATION, *Defendants.*

Civil No. 143-57

ORDER

"Defendants' application for a continuance of the trial of this action filed October 2, 1958, came on for hearing before the Court on October 10, 1958.

NOW, THEREFORE, after oral argument and full consideration of said application and of the letter to the Chairman of the Federal Power Commission from the Chief of the Anti-trust Division of the Department of Justice dated October 6, 1958, and of the letter to this

Court from the Chairman of the Federal Power Commission dated October 7, 1958, the application of the defendants is granted, and the trial of this action is hereby continued until the final determination by the Federal Power Commission of the applications now pending before it in Docket Nos. G-13018 and G-13019. It is further provided and ordered that the pretrial conference heretofore fixed for November 3, 1958, and the time for defendants to answer the interrogatories heretofore propounded to them by plaintiff are hereby continued until such dates as this Court may hereafter designate.

Dated: October 13, 1958
WM. W. RITTER
JUDGE"

The trial of the civil action awaits the final determination by the Commission of the issues presented by the applications in these two dockets. The specific authority of the Commission to approve or disapprove the proposed merger, depending upon its effect upon the public interest, is derived from the Natural Gas Act. As hereinbefore pointed out, there being no question about the ability and willingness of El Paso to acquire and operate properly and lawfully the facilities of Pacific, the one remaining question for determination here is whether, under all the evidence, the proposed merger "is or will be required by the present or future public convenience and necessity." In making this determination there are many factors to be taken into consideration.

Among these factors is whether the evils sought to be prevented or restrained by Section 7 of the Clayton Act, are found by record evidence to be present here, and to be such as to render inimical and repugnant to the public interest the merger here sought to be approved. This is

not to say that the Commission must here determine whether there is technically a violation of the Clayton Act under the facts here established; it has no jurisdiction so to determine. It is, however, the unmistakable duty of the Commission to consid[illegible] such evils to whatever extent they may be shown by substantial evidence to result from the merger of Pacific into El Paso, and to weigh them carefully in relation to the public interest, so as to make a truly fair determination of whether, in spite of their presence, there are other factors shown to exist, which preponderate in establishing that the merger "is or will be required by the present or f[illegible]ure public convenience and necessity." This would be true even in the absence of any pending action taken under the Clayton Act.

Section 7 of the Clayton Act* prohibits the acquisition by one corporation of the stock or other share capital or assets of another corporation engaged in commerce where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." This language makes clear what evils are sought to be prevented by this prohibition. The last paragraph of Section 7 reads as follows:

> Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79 of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

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* 15 U.S.C. Sec. 18.

The Natural Gas Act very definitely vests the Commission with the power to issue a certificate of public convenience and necessity authorizing a natural gas company to acquire and operate facilities for the transportation and sale of natural gas in interstate commerce. El Paso seeks to acquire and operate the facilities of Pacific now used for this purpose and the authority of the Commission to grant or deny the authority so to do is unquestioned in this record. El Paso needed no authority from the Commission to acquire the common stock of Pacific, as it has, even to the extent of controlling Pacific as its majority stockholder; but it very definitely needs authority to acquire and operate the facilities of Pacific by the merger it here proposes under Delaware law. It would appear, therefore, that the certificate of public convenience and necessity hereinafter issued to El Paso, authorizing this acquisition by merger, constitutes the necessary "authority" to El Paso for the consummation of the proposed merger, within the meaning of the language quoted above from the Clayton Act.

It was the amendment of 1950 to Section 7 of the Clayton Act which made its prohibitions inapplicable to transactions approved by the Federal Power Commission. This amendment, of course, contemplates that the "authority" to be given by the Commission is to be based upon the public interest. It is to be interpreted in the light of the provision of the Natural Gas Act that such given authority "is or will be required by the present or future public convenience and necessity." The amendment, in effect, places Congressional reliance upon the Commission, acting under the Natural Gas Act, not to approve an acquisition of assets the effect of which would be "substantially to lessen competition, or to tend to create a monopoly," unless in the carefully exercised judgment of the Commis-

sion the acquisition would nevertheless be in the public interest. Therefore, the transaction here must be carefully examined to determine whether any lessening of competition or creation of monopoly shown by the evidence to result therefrom, is such that Commission authority for the consummation of the transaction should be denied, regardless of all other factors and considerations however favorable to the approval of the transaction.

The courts have most definitely held that the antitrust laws, including the Clayton Act, express a national policy which opposes interference with free competition. But this is not a blind policy to be followed regardless of its detriment to public interest in certain circumstances. It is not so ironclad a policy that it cannot be varied when it becomes obstructive of benefits to the public interest.[10]

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In the amendment of 1950 to Section 7 of the Clayton Act, making inapplicable its provisions in the presence of Commission authority for the consummation of the transaction, the Congress has recognized that the national policy against interference with free competition must not be a blind policy. The Congress has given to the Commission, in the Natural Gas Act, the authority to approve the acquisition of the assets of another such company by a natural gas company subject to the Commission's continuing power to regulate and supervise, and this continuing power indeed constitutes a protective shield against the evils of monopoly. This is particularly true in view of the legal presumption that this agency of Government will properly and lawfully exercise this power in the public interest.

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[10] McLean Trucking Co. v. U. S., 321 U. S. 67; Chicago Board of Trade v. U. S., 246 U. S. 231; and City of Pittsburgh v. F. P. C., 237 F. 2d 741.

The discussion of the "Antitrust Issue" in the Staff brief opens with the following statement:

> It is apparent that El Paso considers the acquisition of the stock of Pacific as violating the national antitrust policy and seeks to avoid its consequences by having the Commission issue to it a certificate of public convenience and necessity to acquire certain facilities of Pacific.

El Paso's position with regard to the Clayton Act, and its effect upon its acquisition and ownership of the Pacific stock, is entirely clear in this record. From the time of El Paso's first negotiations with the principal stockholders of Pacific, it sought to acquire not just the Pacific common stock but the facilities of Pacific, through a procedure under Section 7(c) of the Natural Gas Act to obtain Commission approval of such acquisition. The Pacific stockholders insisted from the beginning upon a tax-free exchange of their stock for the stock of El Paso. After nearly two years of negotiations, El Paso finally agreed to such exchange of stock. The agreement of November 8, 1956, which contained the terms of exchange, provided that there would be no merger of the two corporations, and this provision was made, according to the evidence, in order to make the transaction tax-free within the law and regulations, as interpreted by the Internal Revenue Bureau.

By the end of January 1957 El Paso had acquired more than 80 percent of Pacific's common stock, and by the closing date of the offer of exchange, May 1, 1957, it had acquired 99.8 percent of such stock. Within two months after the stock acquisition, El Paso management decided, upon the basis of its experience, that the operation of the two systems as an integrated unit could be done more efficiently than by the separate operation of the two corporations. On July 16, 1957 the Boards of Directors of both El Paso and Pacific formally authorized the filing

with the Commission of the applications here for certificate authority for El Paso to acquire Pacific's facilities by means of the proposed merger. El Paso's President admitted, on cross-examination, that the decision to file these applications was "considerably stimulated by the fact that the

Attorney General of the United States was prepared to file an antitrust suit against us." The antitrust action filed against El Paso and Pacific, hereinbefore discussed, was filed on July 22, 1957. The applications of El Paso and Pacific were filed here on August 7, 1957.

The amendment of 1950 to Section 7 of the Clayton Act made inapplicable its provisions to "transactions duly consummated pursuant to authority given" by the Commission, acting within its powers. This shows a positive legislative intent to permit mergers of natural gas companies, when found by the Commission to be in the public interest, even in the presence of the things sought to be prevented by the Clayton Act. Otherwise there would be no purpose for the above provision. Therefore, even in the presence of the frank admission by El Paso's President of the "high probability" of an adverse decision in the civil action, if its application here is denied, El Paso still has the right, as a regulated natural gas company, to come before this Commission and request a determination of the issue of whether, under all facts and circumstances, its acquisition of the facilities of Pacific is in the public interest. El Paso has the burden of proving the affirmative of this issue, and if it sustains this burden, its application should be granted.

The Staff cites authorities in support of its position that "size is an earmark of monopoly power." The physical integration of the two systems will make the unified system one of the largest in this country. There is doubt

in this record as to which would be the largest in the country after the merger, El Paso or Tennessee Gas Transmission Company. It will have markets in all the States of the Pacific Coast, and all along its pipelines from Mexico to Canada. This great size should not be permitted to bring awe into the picture here so as to distort the views of one giving consideration to the issues. Certainly a large evil-doer is capable of more evil than a small one. Nevertheless, an immense pipeline system may be in the public interest just as well as a smaller one. There are a good many giants among American industries, both regulated and unregulated.

The position is taken by California and the Staff that the benefits to the public claimed to result from the merger, may be obtained just as well by contractual dealings between El Paso and Pacific as separate corporations, with the Commission exercising its regulatory powers over such dealings. The evidence does not sustain this position and there are distinct benefits to the public from the merger not attainable by the two corporations dealing separately with each other. El Paso has taken a definite position on the record that it does not want the Pacific stock as an investment and that it will divest itself thereof if its application here is denied. In fact, El Paso concedes that there is "high probability" that it will be ordered to do just this in the pending civil action, if the Commission denies its application. Either El Paso becomes the owner by merger, and the controlling operator, of all of Pacific's facilities, or El Paso and Pacific will exist henceforth as two entirely separate and independent corporations; and what they, dealing with each other as such, might accomplish in the public interest is highly problematical.

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The United States District Court of Utah has postponed the trial before it of the civil action in which El Paso and

Pacific are charged with a violation of the Clayton Act, until the final determination by the Commission of the question of whether the proposed merger is in the public interest. This action indicates a decision by the Court that the Commission should have the first opportunity to examine carefully the transaction here, particularly in relation to any lessening of competition or creation of monopoly which may result therefrom, and weigh such factors in relation to the public interest before determining whether Commission authority should be given, pursuant to the Natural Gas Act, to consummate the transaction. Such factors are given primary consideration in relation to the issue here of whether this merger is in the public interest.

Competition

The important competition for consideration here in relation to the public interest is in two fields. The first is in the market areas supplied with natural gas by El Paso and Pacific. The second is in the producing areas which are economically accessible by pipeline to these companies, for the acquisition of natural gas supplies for transportation and sale in their markets.

Competition for Markets

El Paso's markets for the sale of natural gas are in Texas, New Mexico, Arizona, Nevada and California. Uncontroverted evidence shows that Pacific never, at any time, sought to compete for any El Paso market except in California. There is no evidence that El Paso ever had any plan to invade the markets of Pacific certificated by the Commission. So far as markets are concerned there existed prior to the acquisition of the Pacific stock by El Paso no actual or potential competition between these two natural gas companies, except for the California market.

Since the time of its first certificated sale of natural gas

in the California market, El Paso has been the sole supplier of out-of-state gas to that market. It may be said that it has had a certificated monopoly of the California market. It is undeniable that Pacific was a potential competitor for a share in this market. It is just as undeniable that actual Pacific competition in the California market posed no real threat to El Paso's monopoly there. The former Chairman of the Board of Pacific testified that he began negotiations in May, 1956 with Southern California Edison Company (Edison) for the sale of natural gas to it. He knew that such a project would not be feasible if a pipeline were constructed merely to serve this company, and that Pacific would likewise have to have contracts with the Southern California Companies and PG&E to bring the quantity of gas to be sold high enough to make feasible the contemplated pipeline. While there was a letter agreement for the sale of gas between Pacific and Edison dated July 30, 1956,

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it was terminated by Edison on October 2, 1956. Pacific's Board Chairman likewise entered into negotiations for gas sales with PG&E, but he stated that these negotiations did not materialize probably because of the plans of PG&E to build its own pipeline to Canada." These negotiations with Edison and PG&E were the only real efforts made by Pacific to sell natural gas in the California market. The President of Pacific, prior to the stock exchange, testified that he never gave much thought to the sale of gas in California because such sales never came "close enough to reality." It cannot be found, from any evidence in this record, that Pacific was at any time a real competitor for a share in the California market.

Hereinafter are discussed the financial difficulties encountered by Pacific in the construction and commence-

[11] This refers to the project of PGT in Docket No. G-17350.

ment of operation of its pipeline; and it may be found definitely that Pacific, standing alone as a separate corporation, did not have the financial capacity to compete seriously for any share in the California market. While Pacific's former Board Chairman testified that he might have financed a pipeline to the California market from Pacific's planned transmission facilities, he frankly stated that it would have first been necessary that Pacific take "steps to correct its financial condition." While it may be said that Pacific, which needed greatly more markets for its gas at the time of the stock exchange, was ambitious to sell gas in the California market at some future date, it was in no position in the fall of 1956 to compete seriously for business in the California market. Attention is called to the fact that negotiations for the exchange of stock began in early 1955 at which time no effort whatever had been made by Pacific management to attempt to enter the California market.

In the opening statement made on behalf of California, at the outset of the hearing, it was said that "California has no wish to be made solely dependent for a commodity so vital as this upon a single supplier." Upon the map which is Exhibit 1 in this record, there appear the planned pipelines of Transwestern Pipeline Company (Transwestern) and of Pacific Gas Transmission Company (PGT) to be built to bring additional gas to California. The President of El Paso has testified that he had no objection to the construction and operation of these two pipelines. He thought there should be more than one supplier of gas to California. The Commission, on August 10, 1959, issued a certificate of public convenience and necessity to Transwestern, authorizing it to construct and operate a pipeline for the transportation of natural gas from the Panhandle-Hugoton area of Texas and Oklahoma and the Permian Basin area of Texas and New Mexico, to a point in the California-Arizona border near Topock, Arizona; and to

sell and deliver the gas at this point to Pacific Lighting Gas Supply Company which, in turn, will transport and sell the gas in California to the Southern California Companies, which have been supplied

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with out-of-state natural gas solely by El Paso since 1947.[12] There is now pending before the Commission (Docket No. G-17350) the application of PGT, of which the principal stockholder is PG&E, for a certificate of public convenience and necessity authorizing it to construct and operate a 36-inch pipeline for the transportation of Canadian produced natural gas, from a point on the Canadian border near Kingsgate in British Columbia, to a point in the California-Oregon border near Klamath Falls, Oregon, where it will be delivered to PG&E for sale in its marketing area in central and northern California. Of course, this application of PGT has not yet been acted upon by the Commission, but it is certain that a strong competitor is now seeking to enter the California market with Canadian gas, and that it will become a supplier of such gas to California if the Commission finds its project to be in the public interest. Thus, it is quite possible that instead of one, California will now have three suppliers of out-of-state gas, even after Pacific becomes extinct.

Section 7(g) of the Natural Gas Act reads as follows:

> (g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural gas company.

Under the foregoing provisions, the Commission may find at any time that it is required by the public convenience

[12] Opinion No. 328, Docket No. G-14871, et al.

and necessity that some additional qualified applicant be granted a certificate giving authority to transport and sell additional natural gas to the California market. Thus, the elimination of Pacific as a possible competitor for the California market appears to do no violence to the public interest. Furthermore, Section 7(g) prevents a monopoly of any market by a natural gas company except when approved by the Commission as being in the public interest; and the rates for sales of natural gas in the monopolized territory may be reduced by the Commission if they be unjust or unreasonable in violation of the Act.

While El Paso has substantial markets elsewhere, its main market is, and has been for years in California. It will find competition there to be keener for a long time than in any other of its present markets, or in any present market of Pacific. The California market is quite apparently the prize for which competing natural gas companies now strive in the western United States. This is true because of the great growth of California in recent years and its anticipated growth in the future, in population, commerce and industry.

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The California Market

The Staff brief states that "the demands for gas in California have been phenomenal." The California brief speaks of that state as being "one of the major natural gas markets of the United States," and as "now experiencing phenomenal population and industrial growth." It is irrefragable that California's needs for imported gas are now mounting constantly and will continue so to do through the foreseeable future; and at the same time the available supplies of natural gas from within the state are diminishing.

The production of natural gas in California has for a long time been inadequate for its needs, making this ever-

expanding market greatly dependent upon imported gas. In its order of May 31, 1946 in Docket No. G-655, in which El Paso received its first certificate to sell natural gas to the Southern California Companies, the Commission spoke of the project being "designed to meet a developing shortage in the local natural gas supply for consumers in Southern California", and concluded from the evidence "that within a short period of time the available local gas supply will not be sufficient to meet the firm demands for gas" upon the Southern California companies.[13] The Commission said in its order of February 28, 1949, granting to El Paso its first certificate to sell gas to PG&E, that this California Company "like other utilities in the state of California has experienced a constantly mounting demand for natural gas and is confronted with increasing difficulty in obtaining adequate supplies of gas to meet its requirements from available sources within the state." It will be seen that the dependence of California upon imported gas has been great for well more than a decade.[14]

El Paso holds certificates from the Commission authorizing it to sell to its California customers 2,055,000 Mcfd of natural gas. Approximately one-half of this amount is for the Southern California Companies and the other one-half is for PG&E. The certificate issued to Transwestern on August 10, 1959 [15] authorized it to sell and deliver to the Southern California Companies a contract demand of 300,000 Mcfd which would be transmitted through a pipeline with an initial capacity of 350,000 Mcfd, but which could be increased to 640,000 Mcfd by the mere addition of facilities to effect greater compression within the pipeline.

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[13] 5 FPC 115.

[14] 8 FPC 726.

[15] See footnote 12.

El Paso was an intervener in the Transwestern certificate case to protect its interests in relation to its proposed Provo-Las Vegas project to sell and deliver 470,000 Mcfd for consumption by the customers of the Southern California Companies. The Examiner's decision in the Transwestern case stated that "this record is replete with evidence that both the Transwestern and El Paso quantities of natural gas are urgently required to meet the heavy actual and anticipated growth in the peak-day firm demand experienced in this market." The Commission Opinion in this case, rendered after exceptions were made to the Examiner's decision, adopted "so much of the Examiner's decision as treats of the need for this gas in the Southern California markets."

PGT's proposed pipeline from the Canadian border to the California-Oregon border will consist of more than 600 miles of 36-inch pipe which, with other facilities, are estimated to cost about $130 million. None could be more familiar with the needs of its markets in central and northern California than the management of PG&E, which will purchase this Canadian gas from PGT. By means of this proposed pipeline PG&E will acquire for its market in excess of 400,000 Mcfd of Canadian natural gas.

Thus, with the completion of the pipelines of Transwestern, PGT and El Paso (Provo-Las Vegas project), there will be more than 1,000,000 Mcfd of gas entering the California market, which will be in addition to the present importations into that state. Transwestern will be a direct competitor with El Paso for the Southern California markets and for sales to PG&E near Topock, Arizona for the central and northern California markets; and the 290,000 Mcfd which may be added to Transwestern's pipeline capacity, through a mere increase in compression, will make it a strong competito In the central and northern

California markets PGT will be a direct competitor with El Paso for the sale there of Canadian gas or gas from the Rocky Mountain area. It may be safely concluded that both Transwestern and PGT will offer considerably greater and stronger competition to El Paso than Pacific could possibly have offered as a separate corporation, and the competition from these two companies will be immediate rather than several years into the future. The public interest will not be hurt by the elimination of Pacific as a competitor for natural gas sales in California or elsewhere.

Concerning El Paso's activities in relation to the California market, the Staff brief states:

> Instead of permitting other companies to participate in supplying the increased demands, El Paso has sought to dominate that market by control of the supply. This effort to control the supply and secure it away from others has resulted in increased costs to all of El Paso's customers.
>
> The opposition to other applications by moving against the supply of gas is classified by El Paso as prosecuting its own business (Kayser, T. 354).

Since 1947 El Paso has been the only natural gas company selling out-of-state natural gas in the California market. However, there is no evidence here that El Paso ever prevented any competitor from entering this market. In 1954 El Paso opposed the issuance of the original certificate to Pacific because it wanted to hold the natural gas reserves in the San Juan Basin for the California market. It was not then opposing the entry of Pacific into the California market, as Pacific was then seeking no such entry. By supplying greater and greater quantities of gas to this market since it first entered it in 1947, always with authority from the Commission, El Paso may have discouraged

others until recently from attempting to sell imported gas in California, and in so doing may have made greater profits for its stockholders. It should not be condemned for this, particularly when it was performing a service to California customers under regulated rates. There is no doubt that El Paso has successfully competed with other natural gas companies to obtain additional reserves of natural gas accessible to its pipelines. It is a matter of common knowledge that there is, and has been, extensive competition between natural gas pipeline companies for the purchase of gas for their customers in fields to which they have economic access, and such competition has indeed increased the price of natural gas over the years. In any competition for business, one does not find any altruistic beneficence between competitors.

Competition for Natural Gas Supply

During the first years in which natural gas was finding its way into interstate commerce, the markets for it were meager. Natural gas produced with oil was largely flared to the skies. The markets were created by the construction of pipelines which have now extended to all parts of this country from the gas producing areas. With adequate markets, flaring could cease; and the producers in many areas then found that there was competition between pipelines for the purchase of their gas. Before this occurred, natural gas sold relatively cheaply to the first pipelines, but field prices for gas inevitably rose with the additional markets bringing competition to the producing fields.

For a good many years after the enactment of the Natural Gas Act, this Commission did not assert the jurisdiction it had thereunder, to regulate the prices received by the producer of natural gas sold for resale in interstate commerce. There was exempted by the provisions of the Act, the regulation by the Commission of the production and gathering of natural gas; and this specific exemption

was interpreted by the Commission to include the sale of the produced and gathered gas. However, on June 7, 1954, the Supreme Court issued an opinion [16] which interpreted the Act to give the Commission the power to regulate the rates for all wholesales of natural gas in interstate commerce. Therefore, while there is still

competition between pipelines for the purchase of natural gas and reserves thereof in the producing fields, it is not such important competition when the prices of gas sold in interstate commerce are regulated by the Commission, and the competition itself is not permitted to control such prices.

So far as El Paso and Pacific, as separate companies, are concerned, Pacific will be eliminated by the merger as a competitor for available gas reserves in producing fields economically accessible to both it and El Paso. Pacific would definitely be a competitor in the San Juan Basin, in the nearby Aneth Field and in the several fields in the Rocky Mountain area, which are at present quite economically accessible to its existing pipeline. Of course, having its pipelines at present very close to the Canadian border, Pacific would be a true competitor for the purchase of Canadian gas. Pacific would not, with its existing pipeline system, be in a position to compete strongly with El Paso for natural gas reserves in the Permian Basin or in the Panhandle-Hugoton Field.

When Pacific first acquired natural gas rights in the San Juan Basin, El Paso's only competitor there was the Southern Union Gas Company (Southern Union) which sells natural gas in the State of New Mexico which it obtains in the San Juan and Permian Basins and transports to its customers. It purchases substantial quantities of gas

[16] Phillips Petroleum Company v. Wisconsin, 347 U.S. 672.

transported by El Paso. Upon the completion of the already certificated pipeline of Transwestern, this company may well become a competitor for the acquisition of natural gas reserves in the San Juan Basin for the California and other markets in view of the proximity of its proposed pipeline to this source of gas. Transwestern might also become a competitor for gas produced in the Aneth Field or other fields developed in the southern part of the so-called Paradox Basin located near the Four Corners area. So far as the Rocky Mountain area is concerned, potential competition for gas reserves there may surely come from Colorado Interstate, Mountain Fuel Supply Company, and perhaps others whose pipelines are not too distant. In the Canadian producing fields, El Paso will have competition from PGT and perhaps quite a number of Canadian companies which will sell gas both to Canadian purchasers and to other natural gas companies of this country at other points on the Canadian border.

The elimination of Pacific as a competitor for the purchase of gas in the producing fields is not of great consequence when there remain other strong competitors for gas in all producing fields to which the unified company will have access. Such elimination of Pacific will do no real harm to the public interest.

Conclusions Concerning Competition

Considering all of the evidence, it must be found that any lessening of competition, either in the consumer markets or the producing fields, by reason of the elimination of Pacific as a competitor, does not create any obstacle to approving the merger of Pacific into El Paso. There are other factors of greater importance showing this merger to be required by the public convenience and necessity which indeed far outweigh this single factor of the elimination of Pacific as a competitor of El Paso or any other natural gas company.

THE PUBLIC INTEREST

The Applicants aver in their applications their reasons for asserting that the merger of El Paso and Pacific is in the public interest. They have adduced extensive evidence to support these averments. The burden of showing the merger to be required by the public convenience and necessity being upon the Applicants, they are entitled to have their positions and supporting evidence considered as presented. "The Substantial Benefits to the Public in the Proposed Merger" are presented in the Applicants' joint brief under the following four divisions:

1. Improved gas supply and utilization of gas reserves.

2. A financially stronger gas supplier.

3. Expanded and improved gas service.

4. Lower rates.

The factual evidence and the contentions of the Applicants based upon them are discussed herein under the above four divisions. Where the Applicants' contentions are controverted, the opposing positions are likewise there so discussed.

Improved Gas Supply and Utilization of Gas Reserves

Of paramount importance to the decision here in relation to the public interest is the matter of adequate natural gas supplies for the markets here involved. The quest for such supplies brought about this proceeding. While there are other markets in other progressive states to be considered, nothing could be more clearly established by the record evidence than that the constantly increasing demands of the California market for imported natural gas are, and for

some years have been, the stimulus and incentive behind this quest. California's own production of natural gas has been greatly inadequate for years and continues to diminish. It is now importing in excess of 2,000,000 Mcfd, and three natural gas companies are now proposing to increase this by another million.[17] It may be most certainly concluded that the demands of California for imported gas will not be permanently satisfied by this increase, and that its steadily expanding population and industry will bring still further

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demands in future years. It is definitely in the public interest that California, and all other States served by El Paso and Pacific, have supplies of natural gas adequate to their present and foreseeable future needs.

Economic Use of Gas Resources

Pipelines are constructed of capacities to meet daily peak demands of the markets served. When the demands of a market exceed the top capacity of the pipeline serving it, great capacity is obtained only by the construction of additional transmission pipelines. All of such pipelines, subject to the jurisdiction of and certificated by the Commission, are eventually paid for by the consumer through the depreciation allowance in his suppliers' cost-of-service, reflected in the consumer rates. It is of advantage to the consumer that the pipelines serving him remain in service as long as possible; and the long life of the pipeline is dependent upon the life of the natural gas reserves economically accessible to it. If there be an exhaustion of natural gas reserves at the receiving end of the pipeline, its usefulness is ended. Therefore, it is unquestionable that the greater the natural gas reserves economically available to

[17] *Transwestern*, Docket No. G-14871; *PGT*, Docket No. G-17350; and *El Paso's Provo-Las Vegas* project.

an existing certificated pipeline, the longer will be its useful life to the consumers who pay for it.

The out-of-state natural gas reserves which are the closest to California are in the San Juan Basin and the Aneth Field, which, with the Permian Basin, constitute California's chief source of its present gas supply. This is likewise true of New Mexico and Arizona. The El Paso system is also connected by a pipeline to the Hugoton and Panhandle Fields located in Kansas, Oklahoma, and Texas. The Hugoton and Panhandle Fields are among the oldest producing fields in this country, and they have for years supplied, and are now supplying, some of the largest consumer areas in the United States, in addition to El Paso's market area. The Permian Basin, which is predominantly an oil field, has been produced for about 30 years and most substantial depletions of its gas supply will occur daily from the takes therefrom by El Paso and three other major pipeline companies, including Transwestern. The San Juan Basin, in which both El Paso and Pacific have gas reserves, now has fairly well defined limitations, and its potential production lies in the now undeveloped deeper horizons. The enormous daily withdrawals of irreplaceable natural gas from these older fields is constantly lessening their productive lives. This is not to say that the exhaustion of natural gas reserves in these fields is imminent, but a supplier of natural gas to extensive and expanding markets will, indeed, do well to attach his transmission lines to newer and less depleted sources of gas supply, if this be at all economically feasible. The connection of the El Paso system to the newer and undeveloped fields accessible to Pacific's pipelines will be of great advantage to the consumers in its markets.

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Furthermore, and quite importantly, El Paso presently needs additional natural gas supplies to meet the existing

and foreseeable demands of its markets. It would serve no purpose here to set forth the many available figures to show that El Paso's supply of gas should be greater in view of its market requirements. In relatively recent cases before the Commission, seeking authority to transport and sell additional gas to its markets, El Paso has found it difficult to make a showing of adequate gas supply to justify the issuance of the certificates applied for. In the proceeding relating to El Paso's application in Docket No. G-12580, for authority to sell to Southern California Edison Company (Edison) 100,000 Mcfd for use as a boiler fuel for the purpose, among others, of relieving a serious smog condition in and around Los Angeles, there was a serious issue present of whether, on an overall basis, El Paso's total gas supply was adequate to meet its total system requirements, considering its expanding markets, for a satisfactory number of years in the future. In his decision of May 12, 1959, now before the Commission on exceptions, the Presiding Examiner found, in that case, that it appeared from the evidence that El Paso's gas reserves would "constitute a gas supply for about 8 years," and that such short period of time in which it is expected to meet its total system requirements from its present total gas supply would create an objectionable situation from the standpoint of the public interest. It is not found from the record in the instant proceeding that El Paso has only an 8-year supply of gas to meet its requirements; but it is found positively that El Paso needs the additional supplies of gas to be made available by its acquisition of Pacific, in the light of its market requirements, if it would have that healthy relationship between gas supply and gas requirements required by the public interest.

It is unquestionably in the public interest that the greatly expanding California market have access to the additional reserves economically accessible to Pacific's existing trans-

mission facilities. There are immediately available to Pacific substantial supplies of natural gas from Canada and the Rocky Mountain area, which are presently in excess of the needs of its markets and which could be made available to the California markets practically immediately for any emergency, or for additional regular supplies. This is certainly not to say that Canadian gas, as such, will be imported and directly transported through the Pacific system to its connection with El Paso's Northern System for transportation to the California market; but only that the Canadian gas which enters the Pacific system will become a part of all gas in the entire transmission system, the closest part of which may be dispatched to supply El Paso's customers in accordance with their needs. With an abundance of gas available to Pacific from Canada and the Rocky Mountain area, and with Pacific's major markets at the northern end of its pipeline system, it may be quite possible that, in the future, much of the gas in the Pacific system will flow in

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a southerly direction for consumption in the California markets. There are no major markets whatever presently served by Pacific south of its Station No. 6 in southern Wyoming; and the only sizeable markets near its Rocky Mountain reserves are Salt Lake City, Utah, and Denver, Colorado. There is a 26-inch pipeline between Pacific's aforesaid Station No. 6 and its southern pipeline terminus near Ignacio, Colorado, where there is a connection with El Paso's system. Such gas could move through El Paso's existing transmission facilities to any of its present markets.

The integrated system to result from the merger is not to be regarded as a pipeline system to supply one market from one source of supply, such as supplying the California market from Canada. The unified system will have

numerous markets, all of which are to be supplied from the total available system supplies of gas which may be moved in accordance with system demands. Supplies from any source may supplement those from any other source as the overall system operation may require. There will be the major sources of natural gas of both El Paso and Pacific hereinbefore enumerated, which together will constitute most substantial gas reserves with a life of considerable length. These additional reserves of gas on the Pacific system may also be drawn upon so as to conserve the sources of supply closer to California and El Paso's other existing customers. There will be an integrated pipeline system from West Texas to Canada which will be well supplied from its various sources of gas; and such system gas may be taken to any system market from the point closest thereto. A quite economical operation of the system will inevitably result.

In Opinion No. 271, the Commission asserted its duty "to give the fullest possible protection to all the prospective customers," when granting an application for the importation of natural gas under Section 3 of the Act. Following this assertion, the Commission said:

> Such protection would not be afforded to any segment of the American people if its sole source of essential natural gas were through importation from a foreign country without some intergovernmental agreement assuring the continued adequacy of its supply. Otherwise, all control over the production, allocation, and transportation to our border of such natural gas would be in the hands of agencies of foreign governments, whose primary interest would of necessity always be in the needs and advantages of their own people, and whose judgments and actions would be essentially dependent upon public opinion within that country, rather than upon the interests of American con-

sumers. Regardless of any long and cherished friendly relations with any neighbor nation

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able to supply such area with natural gas, it would not be in the public interest to permit the importation of its gas as the sole source for the consumers in need of an uninterruptible supply at a reasonable price, which should always be assured by this Commission to the full extent of its powers.

The Canadian natural gas fields are, in no sense, the "sole source" of supply for Pacific, which still has its basic supply of gas in the San Juan Basin. Considering the various sources of supply of the merged pipeline system, the importation of natural gas should constitute no large percentage of the total gas received into the system. There will not be, at any time, any great reliance upon Canada as a source of gas supply to which the Commission has indicated its opposition. The integrated company will be in a position, therefore, to receive and sell Canadian gas to its various markets, by displacement or directly, while at the same time having readily available very substantial American sources of supply. The application of PGT[18] for Commission authority to transport natural gas for more than 600 miles from Canada to the California border emphasizes the importance of the attachment of the vast Canadian reserves to the California market.

There is little need to give here any of the detail of the geological testimony concerning the vast supplies of natural gas in the Canadian Province of Alberta and in the Rocky Mountain area of this country, to which the Pacific pipeline system has or will have access. Unlike the older oil and gas fields from which large withdrawals of gas have been made over the years, these supplies of gas are relatively

[18] Docket No. G-17350, discussed supra.

untouched. Pacific is now purchasing gas from Westcoast, Ltd., which is produced in the Peace River area of northern Alberta and British Columbia. This contract of purchase calls ultimately for 300,000 Mcfd, of which two-thirds is now being delivered. The capacity of the pipeline of Westcoast, Ltd. is such that very substantial additional supplies may be transported through it for delivery to Pacific. Pacific's contract with PGT calls for 150,000 Mcfd of Canadian gas delivered near Spokane, Washington. The evidence shows that the supplies of gas in southern Alberta are such that they will be capable of providing for the needs of the Canadian markets, and of supplying some demands for export to this country as well. The supplies of gas from the several fields in the Rocky Mountain area,[19] according to the geological evidence, have greatly surpassed all of the original estimates of them.

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There is no doubt from the evidence here that the connection of the Pacific system to that of El Paso will strengthen greatly El Paso's ability to render satisfactory natural gas service to its present markets. At the same time the total system gas supply, now available and to be expected from exploration, will be of advantage to the consumers in all the markets on the combined system. It is, indeed, in the public interest that a pipeline should have a truly adequate gas supply to meet all of its system requirements for a good number of years in the future.

(b) Exploration and Development

When the Commission granted the original certificate to Pacific in Opinion No. 271, it commented therein upon the

[19] These fields are: Bar-X, Grand County, Utah, and Mesa County, Colorado; Big Piney, Sublette County, Wyoming; Piceance Creek, Rio Blanco County, Colorado; Tip-Top—Hogsback, Lincoln and Sublette Counties, Wyoming; and Rangely, Rio Blanco County, Colorado.

fact that the Pacific pipeline "traverses three large sedimentary basins in the States of Colorado, Utah, and Wyoming, in which there has been only minor development due to the lack of a market," and stated further that, according to common knowledge, the "development of this potentially productive area will be retarded unless stimulated by a market outlet." As discussed elsewhere herein, the growth of Pacific's markets has been disappointing; Pacific now has more gas than it needs to supply its present markets. With the attachment of El Paso's markets, particularly the California market, to the merged system, exploration and development should indeed be stimulated in the Rocky Mountain area. All of the area containing these sedimentary basins is within economic reach of Pacific's existing facilities. Evidence in the record shows that the announcement by El Paso of its Provo-Las Vegas project has already caused some stimulation of such activity in this area. To give this stimulation to the exploration and development of these potentially productive areas is greatly in the public interest.

It is definitely established by the evidence that the Rocky Mountain area has considerable potentiality for natural gas production in addition to its proven fields. This area lies north of the San Juan Basin and largely in the States of Colorado, Wyoming, and Utah. The owners of oil and gas rights in this area may reasonably anticipate that their production of gas will be available to any market on the integrated system. Surely, in these circumstances, there will be a great inducement to expend funds for the exploration and development of natural gas in the area, which will be of benefit to all consumers in the markets to be served by the merged system.

It has been shown before that El Paso has an extensive program of exploration and development in various fields and basins, both in this country and Canada. With a direct

connection of the Rocky Mountain sources of supply to its existing markets, El Paso itself has a real incentive to explore in this area. El Paso already has an office in Salt Lake City, Utah, from which is directed its program of exploration in the

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area. There is no doubt from the evidence that a very considerable exploration and development of this area for the production of natural gas may be anticipated when all the markets on the unified system become accessible. It may even be anticipated that exploration and development will be stimulated in southern Alberta as a result of the quest by both PGT and El Paso for Canadian gas for the California market.

(c) Residue Gas

The first certificate authorizing El Paso to transport and sell natural gas from the San Juan Basin to the California market was issued by the Commission in connection with its opinion rendered on July 14, 1950, in relation to El Paso's four applications in Docket Nos. G-655, G-1019, G-1951, and G-1177.[29] This opinion commented on the task confronting El Paso to provide adequate reserves of dry gas to replace losses of residue gas resulting from the reduction of allowable production of oil in the Permian Basin. The opinion further stated that El Paso's purpose in going to the San Juan Basin was to develop additional sources of dry gas. Concerning the marketing of residue gas by El Paso, the Commission said:

> While it is unquestionably a real service in the public interest to market such a considerable volume of flare gas, it imposes on the company a task of some magnitude to provide an ever-ready and adequate re-

[29] 9 FPC 170.

serve of dry gas, since flare gas is available wholly as a result of the production of oil, and the height of oil production is in the summer and not during the winter when El Paso experiences its system-wide peak demands for gas.

Another and equally important reason for a pipe-line company to maintain an ever-ready supply of dry gas, when relying upon a large volume of flare gas for the supply to meet its own pipeline demands, is because the Railroad Commission of Texas and the Oil Conservation Commission of New Mexico may in any given month reduce the allowable production of oil, thereby reducing the availability of residue gas. Such oil allowables are fixed by those state agencies each month for each well in each field, and generally it is done by fixing the number of barrels per well per day for a stated and varying number of days per month. A variation in such oil allowable of as low as one day per month is calculated to result in a loss of approximately 20 million cubic

feet per day of available flare gas to El Paso. It is not uncommon for a reduction of the number of days of producing oil to be as many as three or four, hence it is obvious that the pipe line may have to provide additional dry gas in volumes ranging from 20 to 60 or even 80 million cubic feet per day. This can and often does occur, month by month.

The above opinion points out that El Paso's then expected takes of residue gas "from the Permian Basin aggregate about 750 million cubic feet per day, and the company's present maximum supply of about 250 million cubic feet per day of dry gas in the Permian Basin, even considering its potential of dry gas from the Panhandle-

Hugoton fields, is insufficient in solving the problem created by marketing such a large volume of residue gas." The Commission thus recognized in 1950 that it was "unquestionably a real service in the public interest to market such a considerable volume of flare gas." Flare, or residue gas, produced with oil, must be made available to the consuming public as a conservation measure; but the Commission saw from the evidence in the case discussed above the necessity of having available a supply of dry gas to replace periodic losses resulting from the lessening of oil production.

El Paso is today still confronted with this residue gas problem. In 1957, El Paso marketed 1,300,000 Mcfd of residue gas. After endeavoring for years to increase the percentage of dry gas in relation to total sales, this percentage in 1957 amounted only to 50.46 percent. For each day in any month by which the Texas Railroad Commission reduces the allowable production of oil, El Paso's takes of residue gas from the Permian Basin are reduced from 40,000 to 50,000 Mcfd. These losses usually occur at the end of the month and sometimes in extreme weather when peak demands for gas are being made.

The Canadian gas and the gas from the Rocky Mountain area received into the Pacific system are largely dry gas. In 1957, Pacific marketed only 6.82 percent of residue gas. As the use of gas by the merged system from the sources now available to Pacific increases in percentage over the years the total percentage of dry gas will increase and thus relieve, to a considerable extent, El Paso's existing problem. Such additional supplies of dry gas on the Pacific system will likewise enable the entire system to absorb an even greater quantity of residue gas from the Permian Basin and other sources. The dry gas can be turned on and off any time according to the occurrence of residue gas deficiencies, while the residue gas is only avail-

able with the production of oil and must be taken into the El Paso system as produced. It is greatly desirable, apparently, that the percentage of dry gas in a pipeline system be considerably higher than the present average of about 50 percent.

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One of the disadvantages of using a high percentage of residue gas is that excess capacity must be provided for pipelines in order that the residue gas may be taken as the oil is produced. This disadvantage would be removed by the attachment to the merged system of abundant sources of dry gas which are to become available. A second disadvantage of marketing a high percentage of residue gas is that the life of the average oil well may be only 12 to 14 years, whereas the average dry gas well may be expected to have a longer life. By reason of its marketing such a high percentage of residue gas, the estimated life of El Paso's reserves is relatively low. This is a disadvantage to El Paso, in that it is not able to point to as long a life for its dedicated reserves as are other pipelines using higher percentages of dry gas; and as a result El Paso's management claims that it has perhaps "the highest amortization rate on its bonds of nearly any other pipeline in the country of the size of El Paso." By the attachment of dry gas to the merged system, El Paso will be able to show in the future a considerably longer life for its natural gas reserves and it will be able to market bonds of longer maturity, thus reducing its financing expense.

(d) Use of New Gas Supplies at Lower Capital Costs

It has been shown that all new natural gas reserves accessible to the Pacific system will be accessible as system gas for any market of the combined system. It has also been pointed out herein that Pacific has gas reserves in relative abundance with an inadequacy of markets for the

sale of them. The Pacific pipeline is at present not operating nearly at full capacity, and its surplus capacity may indeed be used to make gas available to the markets with the greater needs. For example, if the California market is to have access to additional sources of gas supply, it must have some pipeline connection to them; and there is no doubt that, looking to the future, California will need such additional sources. A pipeline may be built to such sources, just as PGT proposes to do in connecting the California market to Canadian gas; but the California consumers must pay for the long haul through this pipeline. The combined El Paso-Pacific system will not be a mere supply line from one area of gas production to a single state market, with only the consumers of that market to pay the costs of construction, operation, and maintenance of such supply line. The contemplated integrated system of El Paso will, in time, have markets along a large portion of its pipelines, with several sources of gas supply well spaced along the system, so as to make no particular market pay for any long hauls of gas. This cannot fail to make natural gas available to the customers of the unified system at lower capital cost.

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2. A Financially Stronger Gas Supplier.

(a) Pacific's Financial Problems.

In the discussion of Pacific's financial problems that existed at the time of the stock acquisition by El Paso, let it be said at the outset that while Pacific was then in an unhealthy financial condition, it did not face the death of bankruptcy. El Paso did not acquire this common stock for the purpose of "bailing out" Pacific; El Paso's true purpose has been stated herein. And let it be understood that, in telling of the greater benefits to come to Pacific's customers as a result of the merger, there is no thought

here that Pacific was about to become a complete failure as a natural gas company performing a service in the public interest. Those opposing the merger argue that Pacific, as of the time its stock was acquired by El Paso, was in a position to work out its financial difficulties and would have done so if left alone.

It may be conjectured that Pacific might have done just this; but this future possibility constitutes no basis for the rejection of the merger. This is true whether the possibility is considered separately or together with the other reasons offered in opposition to the merger. The true situation with regard to its finances is, that Pacific simply was not in a position, when its stock was acquired by El Paso, to conduct a vigorous plan or program to bring about truly effective natural gas service for the area adjacent to its pipeline system. El Paso will be able to conduct such a program for the Pacific area upon the accomplishment of the merger, and financial vigor will be needed in the prosecution of such a program.

When Pacific was originally authorized to construct and operate its system by Commission Opinion No. 271, the estimates of its prospective markets then presented have been proven by experience to be quite high. One result of this mistake is that Pacific's actual market demands have been such as not to make possible full utilization of the capacity of its pipeline. Then, too, the inadequate markets failed to produce sufficient revenues to make funds available for truly effective operation of Pacific's extensive system. This made necessary minimal expenditures for operation and maintenance; and Pacific has been operating with over-worked personnel, insufficient in number.

Even with its management practicing necessary economies, Pacific had a net operating loss of $2,067,000 in 1957, its first full year of operation. In order not to default in the payment of the required dividends for 1957 on its preferred stock, Pacific obtained the funds for such

dividends by selling to El Paso one-fifth of its holdings of the stock

of Westcoast, Ltd., reserving the right to repurchase it. Pacific's revenue from the sale of gas in 1957 were about $3,000,000 less than the estimated revenues filed with its initial tariff, filed in 1956 with the Commission. Its sales of gas were about 50,000 Mcfd less than the estimated 390,000 Mcfd for 1957, and this reduction occurred in the sales to distributing companies which yield the higher rates. The sales of products from its extraction plant were about $3,400,000 less than anticipated.

In testimony given at the hearing in the Fall of 1958, officers of Pacific estimated that its operating losses for 1958 would be about $1,500,000, which estimate was based upon the actual experience of the company through the month of August 1958. It was anticipated that the revenues for 1959 might be somewhat better even to the point of earning some relatively small amount of income; but it was not anticipated that any such income would be sufficient to meet the required dividend payments for 1959 on Pacific's preferred stock. It must be kept in mind also that these revenue shortages have occurred even in the face of the economies practiced by the management in relation to operation and maintenance expenditures.

Without counting the exact dollars related to Pacific's distressed financial condition, it is well established by the record evidence that Pacific's sales and resulting revenues were well below the estimates of them and were indeed insufficient for the operation of the company business of rendering a public service. It was found necessary to curtail expenditures for the development of Pacific's natural gas acreage, as required by some of its leases, and to provide for gas needs into the future. Capital expenditures could not be made for the expansion of Pacific's

markets, and segments of the public are thus deprived of natural gas service.

Further detailed discussion of Pacific's financial shortcomings is deemed to be unnecessary; and it is enough to say that Pacific did not have the financial capacity to render the type of service to its markets that should be expected of an interstate pipeline company. It is safe to conclude also that while Pacific might have ultimately survived to become a financially healthy concern, the progress to that end would have been indeed quite slow if Pacific had continued to make its struggle alone.

It is argued, in effect, by the opponents of the merger, that the acquisition by El Paso of Pacific will not constitute a panacea for all of the financial and other ills of the latter. The evidence shows clearly that the acquisition by El Paso merely of the stock of Pacific has relieved, at least temporarily, some of the financial pains that Pacific has been suffering while struggling through its long organizational period.

This merger of the two companies into a financially strong natural gas company cannot fail to bring very much earlier to the Pacific Northwest that type of natural gas service to which it is entitled as a part of the gas consuming American public.

(b) Tax Loss Carryover

As the surviving corporation of the merger with Pacific, El Paso is entitled, under Internal Revenue Code of 1954, to utilize for Federal income tax purposes, a tax loss carryover of $23,734,923, which represents net operating losses incurred by Pacific prior to January 1, 1957. Such tax loss carryover would not be available to El Paso as the parent company owning the Pacific stock. The net operating losses may be carried forward only five years for tax

purposes; and Pacific, therefore, as a separate corporation, very probably could not have nearly the full benefit of the aforesaid sum, as it could only utilize the carryover to the extent that its future income would offset such losses. It is not anticipated that Pacific would have, within such period of five years, sufficient income against which to offset any great part of the carryover.

The tax savings which El Paso will gain by the merger will not, of course, inure to the benefit of the customers of El Paso or Pacific, other than by improving generally the financial position of their gas supplier. Nevertheless, this tax benefit to the surviving El Paso corporation may be regarded as a factor in concluding that the merger is in the public interest. It is anticipated that there will probably be some reduction in the net earnings of El Paso for a period after the merger as a result of the temporary income deficiencies from the operation of the Pacific facilities, as herein elsewhere discussed. The tax loss carryover, when utilized by El Paso, will compensate to a very considerable extent for such reduction in earnings.

(c) More Favorable Acquisition of Debt and Equity Capital

The financial difficulties of Pacific have been discussed herein and it was shown that its revenues were quite low in relation to its investment. Expert testimony by witnesses from the financial field established that because of these financial difficulties Pacific would have found it very costly, if not impossible, to obtain debt and equity capital to finance the necessary expansion of its system in the near future. It is provided in the indenture covering Pacific's first mortgage bonds that additional bonds may not be issued in 1959 and subsequent years unless Pacific is able to meet certain tests with regard to its earnings; and the evidence shows that Pacific, as an independent corporation, could not meet such tests. An investment

banker, familiar with the financing problems of natural gas pipelines in general, and with those

of Pacific in particular, testified that Pacific, as an independent corporation, would find its ability to sell bonds to be so impaired as to make it practically non-existent, and that any sale of bonds it might make would be on a costly basis. In 1957, Pacific sold $35 million of bonds, and opinion testimony shows that being a subsidiary of El Paso enabled Pacific to make this sale on favorable terms that it could not have obtained as an independent corporation.

In discussing hereinbefore the problem of El Paso in relation to its extensive sales of residue gas, attention was called to testimony which showed that El Paso, because of this situation, paid "perhaps the highest amortization rate on its bonds" of any natural gas pipeline company comparable to it. This is due to the fact that wells from which gas is produced with oil do not have as long a period of productivity as do those producing dry gas; and the length of life of the reserves of the pipeline company controls the length of the maturities of its bonds. The evidence establishes that, by having an increased percentage of dry gas available to the merged company, El Paso's borrowing position will be considerably improved.

El Paso has an excellent credit rating. The benefit of this rating is brought to the unified company, and it would appear not to be lessened by the attachment to El Paso of the Pacific facilities, which are temporarily not producing so great an amount of revenue as may be anticipated with their proper extension and development, for which El Paso has the financial capability. It would appear that El Paso itself will be in a stronger financial position after the merger than before; and the merged company should

be stronger than either El Paso or Pacific as independent corporations. The evidence shows that the merged company should be able to attract debt and equity capital readily and upon quite favorable terms. This inures to the benefit of the consuming public.

(d) Disadvantage of Parent-Subsidiary Relationship

The Applicants' original brief discusses the complexities and difficulties of the relationship of parent and subsidiary corporations, particularly in regard to corporate financing. In reaching the decision here rendered, it is not found necessary to consider for any purpose the future operation of Pacific as a subsidiary of El Paso. If the merger here approved is finally sustained, Pacific, the corporation, will become extinct. Otherwise, as hereinbefore shown, El Paso will not operate Pacific as a subsidiary, and will divest itself of the Pacific stock. Pacific will then be operated entirely as an independent corporation.

14895

3. Expanded and Improved Gas Service.

(a) Additional Service to California

The phenomenal natural gas market of the State of California has been discussed hereinbefore. It has been pointed out that this market has been constantly expanding for years, and, under all the evidence here, it will continue to expand for all of the foreseeable future. Officials of the Southern California Companies and PG&E appeared as witnesses to give testimony concerning the anticipated future natural gas requirements for their respective markets. The conclusion to be reached from their testimony is that great quantities of imported natural gas will be needed in California in addition to all sales thereof now certificated by the Commission or for which certification by the Commission is now sought. There is no need

whatever to discuss these future gas needs of California in terms of cubic feet; there are undisputed estimates of these needs in the record, given in considerable detail.

These needs for gas for a market cannot be learned of one day and supplied the next day. Facilities for the transmission and delivery of additional quantities of natural gas beyond the capacities of existing facilities must be carefully planned well in advance, and approval of their construction and operation must be obtained from the Commission after proceedings that are sometimes quite time consuming. Following this the certificated facilities must be constructed; and several years may pass from the time the need for gas in the future is realized until the time that the need is met. So it is that El Paso, in cooperation with its customers, must look to the future needs of all of its markets, and this is particularly true in regard to the future additional requirements for California.

The existing service by El Paso to California has been herein discussed. The project of PGT to bring Canadian gas to California for its affiliate, PG&E, the project of Transwestern recently certificated by the Commission, and El Paso's Provo-Las Vegas project, have all been described herein. The evidence here shows that after all of these pipeline facilities are completed and gas is flowing through them, and the now existing facilities of El Paso, the requirements of the California markets within the next 5 or 6 years will only be met by great quantities of additional imported natural gas. Therefore, El Paso, as one of the suppliers of gas to the California market, must be continually planning to meet the future needs of this great market and all of its other markets.

14896

The importance of adequate supplies of gas to meet the present and future requirements of the California market

can hardly be over-emphasized. As the demands of this market increase with the passing years, El Paso and other natural gas companies will compete for the business. It has been pointed out hereinbefore that the evidence shows that El Paso cannot presently offer to increase its daily deliveries of gas to this market by any great quantities without accessibility to additional sources of supply. The accessibility of the additional sources of supply on the Pacific system will become a reality with the merger.

El Paso will then be in a position to present to the Commission new projects for supplying additional gas to California, and each such presentation may be examined by the Commission for economic feasibility. Furthermore, it may be assumed that El Paso would have a contract with a California customer, obtained after competition with others, before seeking to obtain from the Commission a certificate authorizing additional sales in the California market. Additional deliveries of gas by El Paso to this market may be made either through existing facilities, or expanded facilities along existing rights-of-way; and they may be made also through the presently proposed Provo-Las Vegas pipeline.

It may be concluded with certainty that Pacific, as an independent corporation, would not soon be in a position to propose new projects to supply California, for the reasons given herein. Upon the consummation of the merger, El Paso should be able immediately to start planning and negotiating for such projects in the future. California will be benefited by these proposed new supplies of gas and California customers will have, under the Act, the right to participate in any proceeding for certificate approval from the Commission of any such sale of additional gas in their State. These things being true, it is definitely in the public interest that California have available to it the additional sources of gas supply of the merged company.

While discussing the advantages of having available

these additional substantial sources of gas supply for the California market, it might be well to comment that all of El Paso's present customers may receive the same benefits. It is true that California has the phenomenally expanded market to which will be made the greater deliveries, but other markets may benefit in proportion to their needs. It may be concluded also that the ratio of benefits to the general economy of one State as compared to another might well be in proportion to its consumption of natural gas.

14897

(b) Benefits to Pacific's Present Customers

While the California market has been discussed herein more extensively than the other markets involved, because of its great expansion, there is no reason why all of the markets on the merged system may not benefit from the increased sources of gas supply and the attachment of them to the vast aggregate market of the unified system. It may be taken for granted that the citizens of the States in the Pacific Northwest will be constantly striving to improve and expand their respective state economies. The same will be true of the Rocky Mountain area traversed by Pacific. It may be surely anticipated that these areas will have growth in population, industry and commerce. Their natural gas requirements may be expected to become increasingly greater with the passage of time; and the easy accessibility of substantial sources of supply will be of great advantage.

Pacific's present customers will have the advantage, herein before discussed, of not having to bear alone the costs of long hauls of natural gas. The merged system will be very large, with its pipelines extending for many miles in numerous States between the Mexican and Canadian borders. However, there will be on this vast system natural

gas service to many markets, and there will be scattered along the system sources of gas supply from each of which gas will be flowing into the system. El Paso's President testified that he anticipated that most of the gas imported from Canada would be consumed in the Pacific Northwest states, although this would vary with the rise and fall of peak demands on the system. It may be assumed also that each of the other sources of supply will furnish gas to the markets closest to it. This should necessarily result in a lower unit transportation cost for gas to all markets on the system.

El Paso has given assurance that if the merger is consummated it will be its policy to give natural gas service to every community within economic reach of the unified system. This will be of considerable benefit to the area traversed by Pacific pipelines, in which are a considerable number of unserved communities large enough to make feasible such service to them. It may be taken for granted that El Paso, being prudently managed, will extend its service to every community in which profitable sales of gas may be made. El Paso has the financial ability to accomplish these extensions promptly upon completion of the merger.

(c) Fuller Utilization of the Pacific System

It has been shown clearly by the evidence that the market estimates for the Pacific system have been indeed too high. Its pipelines were constructed of capacities to meet these unrealized estimated market demands, with the natural result that the Pacific system has considerable

idle capacity. This idle capacity may be lessened by the extension of Pacific's facilities to presently unserved markets, and also by the connection of the Pacific system to the El Paso markets.

Well managed gas distributing companies do not blindly buy their supplies from the pipeline. They are interested in the unit cost of transportation to the supplier, so that they may know that a rate proposed to them will not have soon to be increased because based on an uneconomic use of pipeline capacity. Any prospective purchaser will more readily seek service from the unified company when there begins the more economic use of the capacity of the Pacific system. The attachment of the Pacific system to El Paso's markets will eventually bring about an elimination of the idle capacity now existing in the Pacific system, to the benefit of the system consumers by the reduction of unit transportation costs through this system.

If El Paso and Pacific were dealing as separate corporations, this idle pipeline capacity would not nearly so quickly disappear. The merged company may lessen this idle capacity to a considerable extent by the promotional activities for greater sales of which it will be capable. It may also be said that the unit transportation costs could not be so low as on the unified system, to which larger markets would be connected. It is quite obvious that it is in the public interest that Pacific's idle pipeline capacity be quickly eliminated.

(d) Flexibility of Operation

The brief of the Applicants urges that:

> An important benefit of the merger of El Paso and Pacific Northwest with its attendant complete integration of the two pipeline systems is that it will create a flexibility in a day-to-day operations which will give the greatest possible assurance of uninterrupted service to the customers of the combined systems.

To have a proper understanding of this "flexibility" of operations, the definition thereof by El Paso's President, in his testimony, should here be given. The essence of this

testimony is that by central control of the operation of the entire unified system, the flow of system gas may be directed at all times to points of need on the system. He pointed out that this flexibility of operation is of great importance in meeting any shortage of gas occurring at any point on the system, due to whatever cause.

14899

Nothing is more important in the use of natural gas than that there be maintained at all times a continuous flow of gas from the wellhead to the point of consumption. Serious situations have resulted from the continuity of such flow being broken. If there be an interruption of the flow of gas from any source of supply, it would be of greatest advantage, in the operation of a pipeline, to have an alternate source from which to meet the shortage resulting from such interruption. If there be severe weather of unusual duration, which causes greater consumption of gas for such period, it would be quite important to have supplemental sources of supply of gas from which to make up any shortage from the interrupted source. The unified company will have various sources of supply well spaced along its system.

The takes of natural gas by customers of El Paso are not constant. The differences in takes by a customer from day to day may be very great. For example, the takes on weekends are much less than during the rest of the week. With natural gas entering the system at so many points, the flow of gas to any particular market or customer may be increased or decreased with greater facility; and larger temporary demands on one source of supply may be readily relieved by a supplemental supply from another source.

The "flexibility" of operation, as here explained, could not be accomplished to any appreciable extent by cooperation between two separate corporations. It is true that separate natural gas companies have given assistance to

each other in situations of emergency, where their pipelines were connected; but there are other periodically occurring situations than the true emergency, which could be quickly and easily handled by having such flexibility of operation, attainable only through central control of operations. This flexibility of operation is clearly an advantage in rendering proper service to the gas consuming public.

4. Lower Rates in Prospect

(a) Deferral and Reduction of Increases in Pacific's Rates

The importance of increasing the number of Pacific's customers as soon as practicable, in order to better its presently unsatisfactory financial condition, has been shown herein. Any fuel user must be convinced that it is to his interest to shift from the use of another fuel to the use of natural gas, or to install facilities originally for the use of gas. One obstacle to so convincing the fuel user would surely be a present or prospective higher price for natural gas. Therefore, Pacific has had a serious problem in trying to better its financial position by obtaining more revenue from additional customers without deterring its prospective customers with higher rates.

14900

On August 6, 1957, after the acquisition of its stock by El Paso, Pacific made a rate filing with the Commission increasing its rates generally. On September 4, 1957, the Commission entered an order suspending the increased rates, and it was found therein that it was in the public interest that the Commission enter upon a hearing concerning the lawfulness of the increased rates. Subsequently, after the granting of a motion by Pacific, the Commission permitted the increased rates to become effective under bond to make refunds of any part of such rates found to be excessive. This pending rate proceeding is in Docket No.

G-13202, and no date for the commencement of the hearing has yet been fixed by the Commission. These rates, being collected under bond, are the effective rates for Pacific's customers, subject to later refund.

It was the unanimous opinion of past and present officers of Pacific, who appeared as witnesses, that it would have been necessary for Pacific to file for even higher rates than it is now collecting if it had continued as an independent company. Pacific was likewise prepared to file for still greater rate increases in order that it might become a sound and substantial company. Such additional increases would have been necessary to meet the earnings requirements for any further financing by Pacific as an independent company. This would unquestionably have retarded the expansion of Pacific's markets.

El Paso's President gave assurance in his testimony that no new rate increases to Pacific's present customers would be filed with the Commission for at least one year from the date of the approval of the merger by the Commission. This would be quite important to the expansion of the markets of Pacific, and any deferral of rate increases is in the interests of the consuming public. Pacific, as a separate corporation, could really not afford such a deferral of rate increases. Furthermore, during this period El Paso will be carrying on promotional activities and extending facilities to increase the customers and revenues in the Pacific markets.

(b) Savings In Operating Expenses

An official of El Paso gave, in his testimony, a rough estimate of the savings which might be accomplished by the operation of the El Paso and Pacific systems as a single integrated pipeline system under one central management. These savings would result largely by the elimination of duplication of service functions, now carried on by the

separate companies. The witness gave a breakdown of the possible savings in each department of the company, and the total of his estimate of savings was $1,115,000 a year. There is also in the record evidence that savings

14901

may result in any future financing of the merged company, both as to debt and to equity capital. All estimates of savings were based upon the operation of the merged company as a single unit, as contrasted to the separate operation of the two companies.

Attacks have been made upon the accuracy of these estimates of savings. No attempt is made here to determine the accuracy of these estimates. The evidence shows clearly that substantial savings in the costs of operation may be effected by the joint operation of the two systems. No finding is here made of any exact dollar amounts expected to be so saved; and no such finding is important to the decision here upon the basic issue of whether the merger is in the public interest. Any savings in cost of operation are in the public interest.

Reasonable Anticipation of Lower Rates

It is urged in the Applicants' joint brief that "the many economies which will result from the merger of the two systems will necessarily redound to the benefit of *all* customers of both companies in the form of lower rates than would otherwise obtain." This is something that is conceivable under the facts here established. The unit cost of transportation to all markets should be less. Deliveries of gas may be effected at lower capital cost. Debt and equity capital may be more readily acquired and upon better terms. These are some of the factors which may bring about lower rates for the consumers in all markets on the merged system. This is not an adjudication that El Paso,

the survivor corporation, must lower its rates in the future; it is merely a finding that, on the basis of the evidence, there is a likelihood that the economies to be effected by the merger will result in a reduction in the cost of service, which will be of benefit to the consuming public served by the unified system.

14902

Future Rates

El Paso avers in an exhibit to its application in Docket No. G-13019 that it does not now propose to make any changes in its own "FPC Gas Tariff Relating to Rates, Charges or Classification of Service," nor in Pacific's "filed tariff rates," as a result of the merger, except those which apply exclusively to sales or exchanges between El Paso and Pacific, for which there will be no need after the merger. El Paso will continue all service to its present customers and it does not "propose to discontinue or curtail in any manner the services now being rendered" by Pacific to its customers. Pacific's existing FPC Gas Tariff will merely be reissued in the name of El Paso which will continue to perform all service thereunder.

Under Section 157.14(c), "Additional Information", of the Commission's "Regulations under the Natural Gas Act," the Secretary is authorized to request from any applicant in a proceeding upon his application before the Commission, "such additional data, information, exhibits, or other data as may be specified," which the applicant is then required to submit. Pursuant to this authority, the Secretary by letter of June 20, 1958, requested from El Paso, among other things, the following:

(a) System cost of service for the first two calendar years of operation of the merged company.

(b) An allocation of such costs to each particular

service classification, with the basis for each allocation clearly stated.

(c) The combined rate base and rate of return.

(d) Gas Operating expenses, segregated functionally by accounts.

(e) Depletion and depreciation.

(f) Taxes, with the basis upon which computed.

This additional detailed information was submitted to the Staff by El Paso prior to the hearing; and all of it has been received in evidence with extensive supporting testimony. There arises the question of what place this evidence has in this proceeding. It is at most merely certain thoughts or ideas advanced by El Paso, on request therefor by the Staff, upon what it might propose at some time in the future with regard to the rates to be charged in the various markets on the merged system. This expression of El Paso's views upon this subject is certainly not relevant to any issue rightfully and logically related to the basic issue of whether the proposed merger is in the public interest.

This is true because the merger herein authorized is to have no effect whatever upon any rate being paid by any customer of either El Paso or Pacific. El Paso was asked for its views on future rates for the unified system and it gave them; but it has made no filing of them under Section 4 of the Act which would require the Commission to make a determination of whether they are just and reasonable. The rates that will be charged on the merged system are the existing rates which can only be changed by a proceeding under Sections 4 and 5 of the Act. They cannot be changed in this proceeding because the lawfulness of them is not here in issue. It must not be predicted here what the future rates will be, even on the basis of

El Paso's views expressed on request, because no determination can be made except in a true rate proceeding of whether such views would result in lawful rates. It must be kept in mind that any rates for the future, different from the existing rates, would constitute rate changes, the lawfulness of which must be determined under procedures prescribed under Sections 4 and 5 of the Act. Therefore, all evidence relating to future rates to be charged on the unified system is irrelevant to the basic issue of whether the merger is in the public interest.

This is not a rate proceeding and will not be permitted to become such. Nothing in this decision is to be construed as in any way affecting any present or future rate to be charged by the survivor corporation for any sale of gas or service whatever. The issuance of the certificates herein leaves every customer of both corporations subject to the rates he is now paying. El Paso will have, as the survivor corporation, every right pertaining to its future rates that either separate corporation would have as a natural gas company under the Act.

There are contentions in the record that the merger per se will inevitably result in higher rates for El Paso's present customers. The Staff asserts this as one of the grounds advocated by it for the denial of the merger, as does California. While PG&E does not specifically oppose the merger, it seeks the imposition of conditions upon the issuance of the certificate authorizing the merger, which would effectively prevent permanently the allocation of any "costs of service" to any present customers of either El Paso or Pacific, "which would not have been allocable to such customers if the acquisition and merger authorized herein had not been consummated." To attach any such conditions would be to render a decision that under no possible circumstances should any present El Paso customer be required at any time in the future to pay any

part of any cost of service relating to the ownership and operation of Pacific's existing system, regardless of whether such customers were receiving benefits from this operation. The request of PG&E for the attachment to the certificates herein issued of its proposed conditions is denied.

The Southern California Companies and the Southern Union are present customers of El Paso. Each, as an intervener, has filed a brief in which it does not oppose the merger, but seeks only to have a condition attached to its approval which would require El Paso to maintain its accounts in such a manner as to make available in future rate cases adequate data

for cost allocation studies on Pacific's system, as it would exist as a part of the unified company. The public interest requires that a condition be attached to the issuance of the certificate which would enable the customers of both corporations to have, from the accounts of the unified company, such adequate data. With the attachment of such a condition to the certificate, no decision whatever is made concerning cost allocation between the various customers of the unified company. Such cost allocation remains a wide-open issue for some future rate case resulting from action taken under Sections 4 and 5 of the Act.

Hereinafter appears a further discussion of the conditions to be attached to the certificate. This separate discussion of future rates at this point is for the purpose of making clear that they are not to be considered in relation to the basic issue of whether the public convenience and necessity require the merger.

Pacific's Application

Pacific prayed specifically in its application that the Commission "permit and authorize Pacific to abandon,

pursuant to Section 7(b) of the Natural Gas Act," all of its system facilities, "and to abandon all services rendered by means of such facilities, in favor of the acquisition and operation thereof by El Paso", conditioned, of course, upon the granting of El Paso's application and the consummation of the merger. There will be no such abandonment of Pacific's facilities and the service rendered by means of them, as is contemplated by Section 7(b) of the Act. Under the proposed plans of El Paso, there will be no cessation whatever of the services now rendered by Pacific in the use of its facilities. Section 7(b) contemplates an actual abandonment of service and facilities and none such is here proposed. Under similar circumstances, the Commission denied the application to abandon.

In the matters of Kenneth McCullough, Docket No. G-11701, and Canon Oil Production, Docket No. G-11702, which were consolidated for hearing, McCullough sought a certificate authorizing him to continue a sale of natural gas to an interstate pipeline company, which was being made by Canon under certificate authority from the Commission. Canon had assigned to McCullough his leasehold interests from which was being produced the gas being sold as aforesaid, and asked in his application for permission to abandon the sale. Under these circumstances, the Commission made the following two specific findings:

> Inasmuch as effective from the date of the issuance of a certificate herein McCullough proposes to continue under the same contractual provisions and at the same rate the identic operations and service which Canon has been rendering to Hope Natural Gas Company, no abandonment of service is involved and

the application filed by Canon, Docket No. G-11702, should be dismissed as being not required by the provisions of the Natural Gas Act.

In view of the foregoing, it is necessary and appropriate in the public interest to rescind as of the date of issuance of this order the certificate of public convenience and necessity granted to Canon by the order of the Commission issued August 19, 1955, Docket No. G-8777.

In the Commission's Regulations under the Natural Gas Act it is provided in Section 157.20(e) as follows:

(e) The certificate issued to applicant is not transferable in any manner and shall be effective only so long as applicant continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the Natural Gas Act, as well as applicable rules, regulations, and orders of the Commission.

It would appear from the above that the proper procedure to be followed here pursuant to the Act and Commission Regulations, would be to rescind all certificates heretofore issued to Pacific by the Commission, and then by the order herein, issue new certificates to El Paso identical with the rescinded certificates issued to Pacific. By this procedure El Paso would then be specifically authorized by issued certificates to own and operate all of Pacific's facilities, and to perform every service that Pacific now has certificate authority to perform. In the Applicants' joint brief a finding is proposed to the effect that El Paso will, by the proposed merger, "succeed to and assume all the property, tangible and intangible, real and personal, and all the rights, obligations, franchises, and privileges of Pacific

Northwest, and El Paso will render any and all services now rendered, or contemplated by Pacific Northwest including the importation of natural gas from Canada and including the maintenance of the requisite importing facilities at Sumas, Washington on the International Boundary." This finding is hereby made with the exception that the merger will not effect a transfer of any franchise granted to Pacific by a certificate of public convenience and necessity issued by the Commission. It is true that the merger, under the Delaware Law, will accomplish a transfer of all property rights of Pacific to El Paso, and will impose upon El Paso all obligations of Pacific; but the merger, standing alone, could not transfer certificate authority which is not transferable under the Commission's Regulations. The sovereign State of Delaware has no such authority to transfer.

Therefore, the prayer of Pacific in its application for permission to abandon its facilities and the services rendered by means of them, pursuant to Section 7(b) of the Act, should be denied. However, the

authority sought by Pacific to bring about its merger into El Paso, and to do all things necessary to this end, should be, and is, hereinafter granted. The merger of Pacific into El Paso will definitely serve the public interest.

The facilities to be acquired under the certificates of public convenience and necessity herein ordered are to include the entire pipeline system of Pacific as constituted at the time of the merger. By issuing to El Paso identical certificates to all those heretofore issued to Pacific and rescinded hereinafter, El Paso will be given the right and authority to construct and operate any facilities heretofore certificated by the Commission but not yet completed and put in operation by Pacific. In any pending proceedings before the Commission to which Pacific is

a party, El Paso may file a motion to be substituted for Pacific in each such proceeding.

Conditions

The public interest requires that certain conditions be attached to the issuance of the certificates of public convenience and necessity herein ordered. The conditions imposed in the order hereinafter made are to be construed in the light of the discussion of them in this section of the decision.

Merger under Delaware Law.

The certificate of public convenience and necessity authorizing the acquisition and operation by El Paso of Pacific's facilities should not be issued without specifying the manner of acquisition, so that the Commission, acting to protect the public interest, may be entirely sure that El Paso will stand squarely in the shoes of Pacific insofar as its obligations of whatever kind are concerned. El Paso has set forth in its application the legal procedures it will follow, pursuant to Section 253 of the Delaware General Corporation Law to consummate the merger. These procedures were likewise described in the testimony of El Paso's Financial Vice-President, and a summary of them was given in the Applicants' joint brief. If these procedures are followed, El Paso unquestionably assumes every obligation of Pacific under Delaware law; and the certificates are issued upon the condition that they be followed.

Paragraph (a) of said Section 253, specifies the conditions under which the merger may be effected, and prescribes the procedures for the consummation of the merger. The evidence shows that El Paso will be able to meet these conditions. Paragraph (b) covers the rights and obligations of the survivor corporation, reading as follows:

(b) Upon the recording of the certificate pursuant to subsection (a) of this section, all of the estate, property, rights, privileges and franchises of such other corporation or corporations shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation or corporations, and be managed and controlled by such parent corporation, and except as hereinafter in this section provided, in its name, but subject to all liabilities and obligations of such other corporation or corporations and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law by or pursuant to which such parent corporation is organized. The parent corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation or corporations, and shall be liable in the same manner as if it had itself incurred such liabilities and obligations.

Stipulation of Counsel

This stipulation by counsel for El Paso and an Assistant General Counsel of the Commission is self-explanatory. It is Exhibit No. 380 in the record. The certificates of public convenience and necessity hereinafter issued to El Paso are ordered subject to the provisions of the stipulation, which reads as follows:

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matters of

Pacific Northwest Pipeline Corporation

Docket No. G-13018

El Paso Natural Gas Company

Docket No. G-13019

STIPULATION

It is hereby stipulated and agreed by and between counsel for El Paso Natural Gas Company and an Assistant General Counsel for the Federal Power Commission as follows:

14908

(1) That the reported gross profit in the amount of $4,702,856.37 as reflected in Schedule No. 1 attached to a letter dated July 1, 1958 to the Federal Power Commission from El Paso Natural Gas Company entitled "Summary of Charges From Various Fish Companies to Pacific Northwest Pipeline Corporation For Fees and Services" represents profits between companies under common control which arose out of various agreements and contracts between companies under common control.

(2) That El Paso Natural Gas Company consents to imposition of a condition by the Federal Power Commission in any order or orders that may be issued authorizing the acquisition by El Paso of the facilities of Pacific Northwest Pipeline Corporation that are subject to the jurisdiction of the Federal Power Commission, requiring El Paso Natural Gas Company to set up on its books and records and to reflect

in its financial statements, a reserve in the amount of ten million dollars ($10,000,000) to be available for adjustments to the plant and depreciation reserve accounts of Pacific Northwest Pipeline Corporation to be transferred to El Paso by Pacific Northwest upon acquisition of its facilities by merger.

(3) With respect to the disposition of the reserve for accounting adjustments, El Paso Natural Gas Company shall have the right in this or any other proceeding to make such contentions as may be appropriate, but which are not inconsistent with paragraph (1) above.

/s/ STANLEY M. MORLEY
Stanley M. Morley
Attorney for El Paso
Natural Gas Company

/s/ ROBERT L. RUSSELL
Robert L. Russell
Assistant General Counsel
Federal Power Commission

September 9, 1958

Reissuance of Pacific's Tariffs.

It is ordered hereinafter that El Paso shall issue in its own name all FPC Tariffs of Pacific now on file with the Commission. Inasmuch as Pacific goes out of existence with the merger, there should be legally filed tariffs by El Paso, as the survivor, for the performance of all services now being performed by Pacific, without any change whatever therein except the insertion of El Paso's name for that of Pacific wherever it appears.

Supplemental Accounts for Cost Allocation

The pendency of the civil action against El Paso and Pacific in the United States District Court for Utah, for the alleged violation of Section 7 of the Clayton Act, has been discussed herein. In this case, the Attorney General prayed for a preliminary injunction enjoining the defendants "from disposing of any of the stock of Pacific Northwest, from disposing of or commingling or in any way impairing the independent utility of the assets of Pacific Northwest, and from making any basic changes in the organization or operations of Pacific Northwest pending a final adjudication of this proceeding." While this preliminary injunction was not issued by the Court, El Paso has, according to the evidence, respected and complied with the terms of the requested injunction to the same extent as if it had actually issued. It is assumed that Pacific will continue so to do until a final disposition of that proceeding.

At the present time, therefore, Pacific is being operated as an independent corporation. It is, of course, maintaining its separate corporate accounts in conformity with the Uniform System of Accounts of the Commission. If El Paso and Pacific, after obtaining from the Commission the certificates of public convenience and necessity here ordered, should successfully defend against the civil action aforesaid, there would no longer be any requirement for the maintenance of a separate accounting system for Pacific. Therefore, for the protection of certain rights of the customers of both El Paso and Pacific, conditions should attach to the issuance of the certificates here ordered, which would require certain supplemental accounts to be maintained so as to make available for any future rate case certain cost allocation data.

Such cost allocation data will be of importance in any rate proceeding wherein El Paso should seek to change the

existing rates for sales or service to the present customers of either company. As pointed out, no rate question is here decided; but it appears quite necessary that such cost allocation data be made available for the future, so as to make possible a fair trial of any future proceeding involving increased rates for any customers of the unified company. In such future proceedings there will arise problems of cost allocation between customers of the merged company, and El Paso should be required by order herein to maintain the accounts of the merged company in such manner as to make available adequate data for cost allocation studies to be presented in relation to any such change of rates.

14910

The Southern California Companies have requested in their brief the attachment of a condition to the certificates here granted which would require El Paso so to maintain the accounts of the unified company. The requested condition, as proposed by them, is set forth in their brief, and it appears to be reasonable in its provisions and to accomplish the intended purpose. This request of the Southern California Companies is granted and the proposed condition appears in paragraph (G) of the ordering section of this decision. Southern Union likewise proposed a condition to be attached to the certificates, which seeks the same result as that proposed by the Southern California Companies.

Conclusion

El Paso has sustained the burden of proof and established by substantial evidence that its acquisition and operation of the facilities of Pacific are required by the public convenience and necessity. El Paso is able and willing to acquire and operate Pacific's facilities, to perform every service Pacific is now authorized to perform by certificate or permit issued by the Commission, and to conform to the

provisions of the Act and the requirements, rules, and regulations of the Commission thereunder.

The paramount objection to the approval of the merger appears to be that it may bring additional costs for gas to some of the customers of the unified company. The law presumes, at this point, that any rates to be charged in the future for gas delivered to any of the customers of the merged company will be lawful. It is presumed that the Commission will perform its duty and order that only just and reasonable rates be charged on the merged system. The possibility of a change in rates should not stand in the way of a merger found to be in the public interest.

All findings of fact or conclusions of law requested by any party to these proceedings, which have not been made hereinbefore either specifically or in substance, are hereby denied.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission pursuant to its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing El Paso

to acquire and operate all of the facilities of Pacific, subject to the jurisdiction of the Commission, which are described in the application of these two natural gas companies in Docket Nos. G-13018 and G-13019.

(B) All permits and certificates of public convenience and necessity heretofore issued to Pacific by the Commission are hereby rescinded as of the effective date of the merger herein authorized; and identical permits and cer-

tificates of public convenience and necessity to those so rescinded, with any amendments or modifications thereof made by the Commission, are hereby issued to El Paso, upon the terms and conditions of this order and subject to the pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, to be just as effective as if El Paso had originally been issued said certificates; and El Paso is hereby vested with all rights, and charged with all obligations and responsibilities of Pacific under the said rescinded certificates.

(C) The certificates, issued in paragraphs (A) and (B) above, shall be accepted in writing and under oath by a responsible official of El Paso within 30 days from the issuance of this order, pursuant to paragraph (A) of Section 157.20 of the Commission's Regulations Under the Natural Gas Act.

(D) The acquisition of Pacific's facilities by El Paso, as authorized in paragraph (A) hereof, shall be accomplished by El Paso by merging Pacific into it pursuant to the provisions of Section 253 of the Delaware General Corporation Law, by taking the legal steps proposed in El Paso's application and testimony, within 30 days from the issuance of this order.

(E) The certificates described in paragraphs (A) and (B) hereof are issued subject to the provisions of the stipulation entered into on September 9, 1958, by Attorneys representing El Paso and the Commission Staff, which is Exhibit No. 380 in this record.

(F) Within 30 days from the issuance of this order, El Paso shall reissue, in its own name and without other change, all FPC Gas Tariffs of Pacific now on file with the Commission.

(G) The certificates described in paragraphs (A) and (B) hereof are issued upon the condition that El Paso shall

maintain, in conformity with the Uniform System of Accounts, supplemental accounts in scope and form satisfactory to the Commission designed to show separately.

(a) The actual direct gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions which would be involved in any determination of El Paso's cost of service for the system zones formerly served by (i) El Paso, and (ii) Pacific Northwest, and

(b) The actual direct gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions applicable to the main transmission line segments (excluding laterals) of the Pacific Northwest system, divided between:

(i) Northwest System—from Sumas, Washington (on the Canadian boundary) to and including Station No. 14, near Pendleton, Oregon.

(ii) Rocky Mountain System—from Station No. 14, near Pendleton, Oregon, to Station No. 6, near Rock Springs, Wyoming.

(iii) San Juan System—from San Juan Basin to and including Station No. 6, near Rock Springs, Wyoming.

(c) The applicable indirect gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions which would be involved in determination of allocations between the divisions outlined above.

(H) The application of Pacific to abandon its facilities under Section 7(b) of the Act is hereby denied for the reasons hereinbefore given; but Pacific is hereby authorized to do all things necessary for it to do to accomplish the merger herein authorized.

/s/ DANIEL J. KELLY
DANIEL J. KELLY
Presiding Examiner

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(Received Nov. 20, 1959)

BEFORE THE
FEDERAL POWER COMMISSION

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Motion Regarding Time for Filing Exceptions and Hearing Oral Argument

Come now El Paso Natural Gas Company (El Paso) and Pacific Northwest Pipeline Corporation (Pacific) and, pursuant to Section 1.31(a) of the Commission's Rules of Practice and Procedure, respectfully request (a) that the Commission order that exceptions be filed on or before December 4, 1959, being a period of 14 days from the issuance of the decision of the Presiding Examiner, and (b) that, if the Commission desires oral argument in this case, an order be issued setting such argument for December 11, 1959, being a date 21 days after the issuance of the decision of the Presiding Examiner.

In support of this motion it is respectfully shown:

I.

These proceedings involve the companion applications of El Paso and Pacific for the Commission's

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authorization and approval of El Paso's acquisition by merger of the facilities of Pacific. By the merger El Paso will succeed to the rights, obligations, franchises and privileges of Pacific and will render any and all services now rendered or contemplated by Pacific.

Following a full hearing, comprehensive briefs were

filed. On November 20, 1959 the Presiding Examiner issued a decision approving the merger.

II.

One of the many benefits of the merger will be the utilization of Pacific's substantial tax loss carryover, of which $9,019,000 is attributable to the year 1955. In view of Pacific's financial condition, there is no prospect that it will generate sufficient earnings to enable it to utilize any portion of this loss of $9,019,000. Since Sections 172 and 381 of the Internal Revenue Code limit the period for which such a loss can be carried forward, the merger must be consummated by December 31, 1959 or the benefit of the $9,019,000 loss, which would permit a tax saving of $4,689,000, will not be available to El Paso.

In view of the numerous steps necessary to be taken in the consummation of the merger in the event the

decision be favorable, El Paso and Pacific will need all the time prior to December 31, 1959 that the Commission can possibly accord to them by the issuance of a decision at the earliest possible date.

WHEREFORE, El Paso and Pacific respectfully request that the Commission order that exceptions be filed on or before December 4, 1959 and that if oral argument is to be heard, the date thereof be set for December 11, 1959.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY
By CHARLES V. SHANNON
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Its Attorney

PACIFIC NORTHWEST PIPELINE CORPORATION
By CHARLES E. McGEE
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November 20, 1959

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(Docketed Nov. 23, 1959)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Notice Fixing Time for Filing Exceptions and for Oral Argument

(November 23, 1959)

Upon consideration of the motion filed November 20, 1959, by El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, the time for filing exceptions, if any, to the Examiner's decision issued November 20, 1959 in the above-designated matters is hereby fixed for December 7, 1959.

Oral argument in this matter will be heard before the Commission *en banc* at 10:00 a.m. (EST), December 10, 1959, in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C. Parties desiring to participate in the argument shall notify the Secretary the amount of time desired for such purpose on or before December 8, 1959.

/s/ JOSEPH H. GUTRIDE
JOSEPH H. GUTRIDE
Secretary

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[Cover omitted in printing]

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(Received Dec. 7, 1959)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G13018
Docket No. G-13019

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
EL PASO NATURAL GAS COMPANY

Exceptions of Commission's Staff Counsel to Decision of Presiding Examiner

Pursuant to Section 1.31 of the Commission's Rules of Practice and Procedure, Commission staff counsel herewith submits the following exceptions to the decisions of the Presiding Examiner in the above-entitled matters issued on November 20, 1959.

I

Exception is taken to the conclusion by the Examiner that the public convenience and necessity requires that El Paso be issued a certificate authorizing it to acquire and operate all of the facilities of Pacific, and to the accompanying recission of Pacific's certificates of public convenience and necessity. This derision is the result of conjecture and a series of conclusions which are not based on findings of fact grounded upon evidence of record.

II

Exception is taken to the entire statement by the Examiner with regard to "THE CLAYTON ACT" on pages 19 to 25 and specifically as hereinafter set forth:

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The effect of the Commission's decision upon the proceedings in the District Court which will hear the antitrust action now pending against El Paso is of no moment to this

Commission. The Commission is not here trying an antitrust case; its duty is to determine whether the public convenience and necessity requires the acquisition hereinabove referred to. In so doing, the Commission should consider the impact of the requested acquisition upon the public interest and while not bound by the antitrust laws, it should consider the Congressional policy favoring competition (*City of Pittsburgh* v. *F.P.C.*, 237 F. 2nd 741).

The Commission has taken the position that it had no control over the acquisition of stock, with regard to which the antitrust action was commenced, nor does it have specific control, except by means of its conditioning power, over the merger of the two corporations. However, were we to accept the Examiner's conclusion that Section 7 of the Clayton Act, as amended, restricts the Court to the conclusions of the FPC, then the Commission should concern itself more fully with antitrust aspects of the proposed merger.

When El Paso first considered acquiring Pacific's assets, it may have desired to operate as a single company. El Paso's President indicated that this was his desire from the outset. Yet, El Paso chose to acquire the stock and operate the corporations in a parent-subsidiary relationship. Although the Examiner pays little heed to the fact that only two weeks after the antitrust action was commenced

in Salt Lake City, El Paso submitted the instant application; its President testified that the action precipitated the application.[1] It is submitted that a clear conclusion may

[1] Mr. Kayser: "* * * Now, the big distinction is this: when that was challenged by the Justice Department, then we could not continue to try to integrate the two companies. As a matter of fact, the Justice Department warned us that if we did scramble it, they were going to apply for injunctions against our scrambling. Well, they had a perfect right to do so because we did not have any right to make it impossible for them to win the suit. Now, when that occurred, then, of course, taking into consideration all those things, we filed the application here (Tr. 1536).

be drawn that El Paso is seeking to avoid prosecution by this action.

On page 24, the Examiner's decision states:

> Either El Paso becomes the owner by merger, and the controlling operator, of all of Pacific's facilities or El Paso and Pacific will exist henceforth as two entirely separate and independent corporations and what they, dealing with each other as such, might accomplish in the public interest is highly problematical.

Although El Paso's president asserted several times that he would not know how to operate El Paso and Pacific as separate companies, and that, in view of the pending antitrust action, El Paso would have to divest itself of Pacific stock, it is submitted that these are but hollow threats and that unless El Paso is *forced* to divest itself of the stock (by the antitrust action) it will retain it. It did not purchase this stock expecting to divest itself thereof: the Board of Directors knew at the time El Paso procured the stock that the Attorney General might bring suit (Tr. 1441). As pointed out

variously by the Examiner, there are too many advantages to El Paso for it to summarily give up Pacific. The *threat* of divestment, no more than the acquisition of the stock in the first place, should be of no concern to this Commission. The Commission is here concerned with the adverse effect of the merger upon the consumer.

III

Exception is taken to the following statements of the Examiner on pages 25, and 26:

> It is just as undeniable that actual Pacific competition in the California market posed no real threat to El Paso's monopoly there. * * * It cannot be found

> from any evidence in this record that Pacific was at any time a real competitor for a share in California market.

It should first be noted that virtually the entire time Pacific's pipeline has been operating it has been under the control of El Paso. The offer for the acquisition of Pacific's stock was made on November 8, 1956. By the end of January 1957, El Paso had acquired over 80% of Pacific's stock; by the time of the closing of the offer, May 1, 1957, El Paso was the possessor of 99.85% of Pacific's stock. Pacific's pipeline began minor operations in the last quarter of 1956; it did not commence full operation until 1957, at which time it was *already* a subsidiary of El Paso, subject to El Paso's dictates. That it may not at that time have offered a real threat to El Paso's monopoly is understandable—it was a part of El Paso.[2]

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The *critical* time to consider, then, is when Pacific was not under El Paso's control and had freedom of action. Even El Paso's President, Mr. Paul Kayser, agrees that prior to the acquisition of Pacific's stock, El Paso was a competitor in the California market, especially as to PG&E (Tr. 1283).

Mr. Ray C. Fish, the promoter of Pacific's line and then Chairman of Pacific's Board testified:

> Mr. Kurtz: Now, going over to the California market, Mr. Fish, let us go back before you were certified, before you received a certificate from this Commission. Back even then you studied the possibility of transmitting natural gas to California from Canada, did you not?

[2] Q: When you took over the active management of Pacific, at that time operational-wise you were integrating the two companies, Pacific and El Paso, were you not? Mr. Kayser: Yes, Sir (Tr. 1304).

The Witness: Oh, I believe so, even from the beginning of time of the project we considered that there was going to be eventually large volumes that were going to be available, and like all during the six or eight years of that project, we studied plans to fill I think every possible market in California, and likewise every possible market east. I mean I even talked with Northern Natural. I even talked with the Chicago market. I went back and made a deal with them and, yes, we were looking to move gas in every direction. We based our whole project on this general basic fundamental fact, that Pacific was going to be the most unique pipeline system, the most unique natural gas transmission system ever conceived. I still think it is great. We were going to connect up on that end in Canada and the south end with American reserves and we could flow it out in any direction to any market, and that was our basic concept of it. (Tr. 1170).

Pacific had an abundance of natural gas available; it would move it to the market which had a need for it. It is clear from the record, accepted by the Examiner, and not excepted to by Staff, that California has a billowing market for this gas. Surely with its great *need* for this gas, and Pacific's possession thereof, it is

highly probable that Pacific would have moved the gas to that market—in competition with El Paso, if need be. El Paso must have considered that Pacific could move the gas to California; it not only contracted to supply California with Pacific's gas, but it planned to build a line to accomplish this purpose (first the Mountain Home line, later the Provo-Las Vegas line). If it were not for the California market, El Paso could not use the gas imported from Canada (Tr. 1270), for which the Pacific system

(14936)

ideally lends itself. This was one of the main reasons El Paso purchased Pacific (Tr. 1272).

In fact, Pacific's line is one of the most economical ways to move gas to California:

> Mr. Kurtz: Now you mentioned the fact of the unique position of Pacific's pipeline. Did you ever give consideration—well, let us put it this way—in considering that unique position, does that place Pacific in a position to render more economically the transportation of gas, say, from Canada to the California markets than a new pipeline?
>
> Mr. Fish: I considered it so, and I still think so. I don't see how any pipeline to California markets from Canada can go through Pacific's territory and get down to any California market cheaper than what Pacific can render that service for in the northwest area (Tr. 1173).

Pacific had the gas and it intended to move it to California:

> Mr. Furbush: Well, what I am getting at is: at that time, apparently you placed yourself in the position where you had something in the neighborhood of eight trillion to ten trillion in the gas reserves, and you had a market in the Pacific northwest which would have been satisfied with the reserves which you were getting from the San Juan Basin, somewhere in the neighborhood of two trillion to three trillion, and I would just like to find out what market you had in mind at the time you entered into that contract with Westcoast Transmission Company.

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> Mr. Fish: Well, that was very obvious. Simultaneously, entering into that contract with Westcoast, we had a three-way deal: El Paso, Westcoast, Pacific. I

mean we had a tri-party deal. We sold to El Paso at that time 250 million a day.

Mr. Furbush: To take the gas where?

Mr. Fish: Oh, let me see—we were delivering it to them at—at that time the point was Mountain Home. So we sold 250 million.

Mr. Furbush: For the purpose of taking it to California?

Mr. Fish: Yes, but it was a tri-party deal. (Tr. 1209)

Had it been necessary so to do, Pacific could have constructed a pipeline to California, albeit the Examiner is of the opinion it could not have financed the line. Pacific, prior to El Paso's control could have financed a pipeline:

Mr. Kurtz: Now, there has been brought up here the question of financing of Pacific and its ventures, including the proposal to go to California, by yourself, and let me ask you: At any time did you feel that Pacific could not finance the construction of a line to go to California?

• • • • • • • • • •

Mr. Fish: Why, we most certainly could have financed a line, because any line that we would have undertaken would have had to have been economically feasible. Therefore, we could have financed it. I have never entered into a contract that I have not or could not finance. Therefore, I could have financed.

Mr. Kurtz: Yes, and even when you were negotiating for the sale of that gas to the California markets there was no doubt in your mind that you could finance that pipeline, was there?

Mr. Fish: No, sir, because the type of contract I would have with my customer companies would be such on which I could finance. (Tr. 1191-1192)

Nor was Mr. Fish discouraged with regard to his proposals to build a line to California by his finance people, White, Weld and Co. Mr. Fish discussed his proposals with Mr. Kiernan, now a special partner of that company:

> Mr. Kurtz: And did Mr. Kiernan at any time discourage you on the grounds you could not finance such a project?
>
> Mr. Fish: Not that I remember. In fact, there was not any doubt in my mind. It might have been hard to do, but again, it would be based on making a suitable contract with the market company that would make a line economically feasible, and then you can finance it. (Tr. 1192)

Had El Paso not acquired Pacific's stock, there was always the possibility that Pacific would have moved to enter the California market directly. As the situation now stands, Pacific will be supplying gas to El Paso for it to sell to the California market. Some competition in the market-place has already been eliminated.

At various times Mr. Fish discussed the possibility of Pacific's selling gas directly to the California markets. Although not accepted by either Southern California Edison Company or PG&E, there was still the possibility that should the demand become great enough, this relatively cheaper Pacific gas which was available would be purchased by these California customers.

IV

Exception is taken to statements of the Examiner on pages 28 and 29 in his discussion of the California market, to wit: the last sentence on page 28:

> The certificate issued to Transwestern on August 10, 1959, authorized it to sell and deliver to the Southern California Companies a contract demand of 300,000 Mcfd which would be transmitted through a pipeline with an initial capacity of 350,000 Mcfd, but which could be increased to 640,000 Mcfd by the mere addition of facilities to effect greater compression within the pipeline.

and the following sentences in the second full paragraph on page 29:

> Transwestern will be a direct competitor with El Paso for the Southern California markets and for sales to PG&E near Topock, Arizona for the central and northern California markets; and the 290,000 Mcfd which may be added to Transwestern's pipeline capacity through a mere increase in compression, will make it a strong competitor. In the central and northern California markets PGT will be a direct competitor with El Paso for the sale there of Canadian gas or gas from the Rocky Mountain area. It may be safely concluded that both Transwestern and PGT will offer considerably greater and stronger competition to El Paso than Pacific could possibly have offered as a separate corporation, and the competition from these two companies will be immediate rather than several years into the future. The public interest will not be hurt by the elimination of Pacific as a competitor for natural gas sales in California or elsewhere.

Transwestern's pipeline eventually may be powered to increase its capacity as found by the Examiner, but that is not the sole criterion upon which an expansion must be based. Transwestern presently has an inadequate gas supply to support any expansion. In fact, the Commission

found only a minimum supply of gas available for the initial pipeline construction (*Transwestern Pipeline Company, et al.*, Opinion No. 328, Mimeo p. 5). Thus, without an additional supply of gas, Transwestern will be unable to further enter the California market, and it is by means of preempting the supplies of gas by which El Paso has primarily opposed competition in the California market. Its action in the past foretells its future action. When one considers

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that the California market now absorbs over 2,000,000 Mcf/d which is sold to it only by El Paso, and that El Paso plans to supply it with an additional 470,000 Mcf/d, the 300,000 Mcf/d which Transwestern has been authorized to deliver becomes minute in comparison. Transwestern is a competitor, true, but in its present condition, it is a long way from becoming a "strong competitor."

The PGT line is not yet constructed. In fact, the hearing stage of its case has not yet been completed in Commission proceedings and the exportation of gas for its line from Canada has not yet been approved by the Canadian authorities. The Examiner's apparent acceptance of the fact of certification of this line is not warranted; PGT may never move gas to California, and may never, therefore, become a competitor of El Paso in that market. Even if certification should be granted in the future, it cannot be said that the competition from this company is "immediate rather than several years into the future."[3]

Even if one should accept the conclusion that this PGT line and the Transwestern line would soon be operative in

[3] On this point it should be noted that the Examiner's reference to Commission Opinion No. 271 (Decision p. 35) that it is not in the public interest to permit the importation of gas to be the sole source of supply overlooked the Commission's "Order Denying Motions to Dismiss" in *Midwestern Gas Transmission Company, et al.*, Docket Nos. G-9451, *et al.*, which *specifically* overturned that view (16 FPC 486, 488).

California, the fact remains that El Paso, with Pacific merged into it, would sit in a commanding position over any relatively close supply areas needed support a subsequent expansion into the California market. El Paso's present zone of supply extends south and west with the search for new supplies taking place from Canada to Texas. Pacific's line transcends several potentially valuable gas reserves merged into

El Paso, this line gives it a commanding position to obtain any such available gas—at the best bargaining price. It's attempts in the past to foreclose competition in the supply areas (as set forth in Staff Brief pp. 13-25) serve to indicate that it would continue this practice in the future.

Nor would the fact that the producers would have to come before the Commission for certificates of public convenience and necessity to authorize the sale to El Paso prevent this self-protective domination of the supply areas, for by the time an application is filed, it is a *fait accompli* —the gas will have been contracted for, and potential competition eliminated. Thus one of the ends sought to be prevented by the antitrust laws (and one of which the Commission does well to note) is the size and location which precludes effective competition.

V

Exception is taken to the following statement of the Examiner in the first paragraph page 34:

> Furthermore, and quite importantly, El Paso presently needs additional natural gas supplies to meet the existing and foreseeable demands of its markets. It would serve no purpose here to set forth the many available figures to show that El Paso's supply of gas should be greater in view of its market requirements.

In relatively recent cases before the Commission, seeking authority to transport and sell additional gas to its markets, El Paso has found it difficult to make a showing of adequate gas supply to justify the issuance of the certificate applied for. In the proceeding relating to El Paso's application in Docket No. G-12580, for authority to sell to Southern California Edison Company (Edison) 100,000 Mcfd for use as a boiler fuel for the purpose, among others, of relieving a

serious smog condition in and around Los Angeles, there was a serious issue present of whether, on an overall basis, El Paso's total gas supply was adequate to meet its total system requirements, considering its expanding markets, for a satisfactory number of years in the future. In his decision of May 12, 1959, now before the Commission on exceptions, the Presiding Examiner found, in that case, that it appeared from the evidence that El Paso's gas reserves would "constitute a gas supply for about 8 years", and that such short period of time in which it is expected to meet its total system requirements from its present total gas supply would create an objectionable situation from the standpoint of the public interest. It is not found from the record in the instant proceeding that El Paso has only an 8-year supply of gas to meet its requirements; but it is found positively that El Paso needs the additional supplies of gas to be made available by its acquisition of Pacific, in the light of its market requirements, if it would have that healthy relationship between gas supply and gas requirements required by the public interest.

No issue, of course, could be taken with the fact that every pipeline will seek to continue serving its customers

for as long a period as possible. El Paso is no exception. However, the Examiner's conclusion that El Paso does not presently have a sufficient supply of gas to meet its customers' present requirements and for a sufficient number of years into the future simply overlooks the

evidence in *this* case and the Commission decision in Docket No. G-12580.[4]

In its decision in *El Paso Natural Gas Company*, Docket No. G-12580, Opinion No. 333, issued November 27, 1959, the Commission stated with reference to El Paso's reserves:

> The examiner's determination as to El Paso's reserves shows a thorough consideration of all the then available evidence. However, on October 27, 1959,

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[4] El Paso represented in *this* case that it had an ample supply of gas. Its geologist, Mr. Hill, testified to this end:

> MR. HILL: . . . By referring to Exhibit 351 it will be seen that El Paso Natural Gas Company's total requirements, including 50 percent of the "best efforts" gas can be supplied from its presently dedicated reserves through the year 1975. Although the company considers this highly significant in that it is based solely upon reserves known and dedicated to it today and the fact that future discoveries may very well make available to the company sufficient additional gas to supply the remainder of the "best efforts", the company is no longer relying on this showing. (Tr. 886).
>
> * * * * * *
>
> MR. GRAMBLING: Then according to Exhibit 354, the El Paso Natural Gas Company can supply its total gas requirements including the firm contractual requirements and all of the best-efforts gas provided for under contracts with California distributing companies through the year 1971, from the presently known and dedicated reserves; is that correct?
>
> MR. HILL: Yes sir; it is. (Tr. 892-893).

El Paso has claimed in *this* record that its gas reserves owned and controlled under contract with others at the end of 1957 stood at an all time high of more than 27.1 trillion cubic feet, and that it had completed negotiations for additional reserves with producers of approximately 1.8 trillion cubic feet of which a major portion will be dry gas. (Item U-2).

staff and El Paso reached an agreement, based on additional reserves showings made by El Paso after the examiner's decision, in which staff stipulates that El Paso has sufficient reserves to support this sale. We will accept this stipulation as sufficient evidence of El Paso's improved position in regard to reserves. This means that as of October 27, 1959, El Paso had the minimum of reserves required to service its system-wide requirements including the 100,000 Mcf per day herein authorized. (Mimeo page 5.)

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El Paso therefore had sufficient reserves to support an increase in service to the California market.

It is difficult to perceive how the merger of these two large corporations will improve El Paso's supply position any more than the operation in a parent-subsidiary relationship already existent. To be sure, the lack of a merged company has not heretofore prevented El Paso from seeking out gas in areas to which its pipeline had not previously extended. It felt no compunction against seeking supplies in the Cato area (Tr. 1284), in the Clear Creek area (Tr. 1327), in the Big Piney area (Tr. 1332), in the Pinedale area, Wyoming (even before Pacific was "projected" (Tr. 1332), or in Canada (Tr. 1401). It had no pipeline extension to any of these areas, but when it does procure gas in any of them it simply arranges with other pipelines, including its present subsidiary, Pacific, to transport the gas to its market. El Paso will have opportunity to explore for gas and transport such gas as it may discover either while maintaining its present parent-subsidiary relationship or on an independent basis. Thus, quite aside from the merger, the greatly expanding California market has access to the additional reserves economically accessible to Pacific's existing transmission facilities.

When the Examiner states at page 35:

> • • • There will be an integrated pipeline system from West Texas to Canada which will be well supplied from its various sources of gas; and such system gas may be taken to any system market from the point closest thereto. A quite economical operation of the system will inevitably result.

he fails to recognize the simple fact that there is presently virtually an integrated pipeline system, and that in view of the parent-subsidiary relationship, what El Paso wants El Paso can very well get without the merger. When Pacific's pipeline system received its certificate from the Commission, it was determined that the public convenience and necessity as then set forth required that Pacific acquire these reserves and construct its lines. Applicants have here failed to show how the public interest can *better* be served—except that intercompany dealings would cease to be regulated as would two-company transactions. El Paso's vice-president, Mr. Steen, characterized this as a welcome change:

> Operating it as a subsidiary, and this is the one that I get worked up about, anything that I do in that field or along that main line, as far as mixing the gas streams or taking some over here, exchanging it over there, I have to go to the Federal Power Commission and get approval to do that, just like I was making that deal with some completely foreign company (Tr. 1993).

El Paso as presently constituted has an adequate supply of gas and has access to Pacific's supplies by purchase, if necessary.

VI

Exception is taken from that part of the Examiner's decision on pages 39 and 40 in which he finds that the merger of Pacific into El Paso will alleviate the residue gas "problem" and that the over-balance of residue gas to dry gas on El Paso's system has caused acceleration of its bond amortization rate.

In finding that El Paso marketed approximately 50 percent residue gas in 1957 and that together with Pacific gas the ratio dropped to 45.58% residue gas to 54.42% dry gas, the Examiner failed to note that El Paso has been consistently increasing its own dry gas situation absent help from Pacific. Thus in 1952 the ratio was only 40% dry gas to 60% residue, and *without Pacific* that difference had been cut to 50%-50%. In speaking of El Paso's dry gas supply, Mr. Kayser apparently accepted Pacific virtually as part of El Paso when asked:

> Q. Presently you have a ratio of 45.58 percent and 54.42 percent as between residue and dry gas for the year 1957?
>
> A. That is right (Tr. 1530).

The merged corporation would not improve this ratio any more than the present parent-subsidiary relationship already has.

Furthermore, although Applicants have alleged and the Examiner has accepted that El Paso has "the highest amortization rate on its bonds of nearly any other pipeline in the country of the size of El Paso." (And how many are there that nearly approach the size of El Paso?) as a result of its relatively large supply of residue gas as compared to dry gas, it is submitted that Mr. Kayser's own

testimony undercuts this argument. In discussing his debt ratio and short period of amortization, Mr. Kayser stated:

> "• • • Now we have been working at that thing for 12 solid years, and I have spoken to analyst societies time after time, and I have never seen the securities be affected as to price by reason

> of that fact. And let me—if you do not mind, I would like to explain why, the theory • • • is that the company has been expanding so rapidly, and there is such a large amount of debt, the proceeds of which have gone into property and yet the property has not been completely connected and the earnings made available, and have their affect, that we have a higher debt ratio initially than we otherwise would, that our debt ratio is very much like a brand-new company because every year we are building a sufficient amount of additional facilities to make it correspond to a new company, and that *once the speed with which we are expanding is checked, then* the rate of amortization on our bonds and our debt ratio immediately improves—in other words, if we would stand still, and issue no more bonds for three years, we would have a very nice debt ratio • • • (Tr. 1531-1532, emphasis supplied).

Thus, the picture is clarified. It is not the dry gas—residue gas ratio that causes the shorter period of amortization; it is rather the rapid expansion of the company. If this depends upon the rapid expansion of El Paso, the merger of the Pacific into El Paso serves merely to *increase* the debt ratio; it does not *improve* the situation. In all likelihood the merger would have a deleterious rather than helpful effect upon the period of amortization.

Furthermore, in its present situation El Paso's bonds are "set" (Tr. 1531). There is no evidence that El Paso

now contemplates calling its bonds in order to issue new bonds with a longer amortization rate, nor is there any *evidence* in this record as to what the amortization rate would be under any new mortgage that might be issued.

VII

Exception is taken to the statement of the Examiner on page 41, first paragraph, that "at the time of the stock acquisition by El Paso * * * Pacific was then in an unhealthy financial condition".

Such a generality does not give true significance to the then existent Pacific corporation. At the time of the stock acquisition (the offer was made in November 1956, and the corporation was 80% owned by El Paso by January 31, 1957) Pacific was just on the verge of commencing operations; as a new company without any substantial receipts, having as yet rendered little service to its customers, it would naturally show little income. This, however, does not mean that it was in an unhealthy financial position. It had recently completed the construction of an extensive pipeline, it had available substantial reserves, and in addition to the market to which it was connected it had other possible markets which would take its gas. Certainly the Chairman of its Board at that time considered it financially sound (Tr. 1205). And El Paso obviously did not consider it in an unhealthy financial condition, else what would justify such a disproportionately large expenditure by it to acquire the stock (See Staff brief p. 33). Can it be said that El Paso recognized this "unhealthy condition" and acquired Pacific against its shareholders interest? Finally the substantiality of Pacific's financial condition is attested to by the fact that it was able, at a loss to itself, to give substantial relief to some of its distribution customers, in excess of $1,400,000 (Exhibits 387, 388, 389, 390, 391, 392).

If Pacific were in such dire financial straits, how could it possibly have deprived itself of such revenue? It is submitted that Pacific, for a new corporation, had a sound financial structure and that this was so recognized by El Paso at the time of the stock acquisition.

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VIII

Exception is taken to the following statement of the Examiner on page 41 of his decision, second paragraph:

> The true situation with regard to its finances is that Pacific simply was not in a position, when its stock was acquired by El Paso, to conduct a vigorous plan or program to bring about truly effective natural gas service for the area adjacent to its pipeline system. El Paso will be able to conduct such a program for the Pacific area upon the accomplishment of the merger, and financial vigor will be needed in the prosecution of such a program.

This generality simply is not in accord with the facts of record. As stated above, at the time El Paso acquired Pacific's stock the line had not commenced full operation; as a new pipeline it had already attached considerable business and undoubtedly would have acquired more if not acquired by El Paso. When questioned as to what additional business El Paso planned to attach after the merger would take place, Mr. Kayser testified as follows:

> Q. So it comes down to this, that the only additional facilities that you have in mind at this time that would be economically feasible are the line to Eugene, Oregon, off the Pacific system, other than, of course the Provo line.
>
> A. (Mr. Kayser): That is the one that we have made, I'll say unconditional, taken an unconditional obliga-

tion, on condition only on the merger being granted, that we'll build (Tr. 1668).

Other possibilities would depend upon whether El Paso could get the load in the communities to justify such lines (Tr. 1669). Such other markets as the Examiner may have had in mind are left completely to conjecture and speculation; the record and his opinion fail to specify additional markets. The line to Eugene, if economically feasible, would probably be built in any event if the parent-subsidiary

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relationship is maintained because it would be beneficial to El Paso's stockholders. This "program" of development is not sufficient to warrant the approval of the merger, in view of the shortcomings of such move.

IX

Exception is taken to paragraph 3, page 41 wherein the Examiner states:

> • • • Then, too, the inadequate markets failed to produce sufficient revenues to make funds available for truly effective operation of Pacific's extensive system. This made necessary minimal expenditures for operation and maintenance; and Pacific has been operating with over-worked personnel, insufficient in number.

Exception here is necessary first to remove any inference that Pacific was being improperly or inadequately managed. There is no evidence in this record that such was the case. True it is that some departments of Pacific could have used additional personnel; it is extremely odd, in view of this fact, that El Paso indicates it would after merger conduct the business of Pacific with fewer personnel, and at a savings estimated at $1,115,000 per year (which the evidence showed to be greatly exaggerated (Tr.

1963-1975). This is compounded by the fact that El Paso asserts that it would keep on its payroll all of the Pacific personnel who wished to work for it, setting this view forth in meetings held in Salt Lake City with these personnel, and reasserting this fact in the hearings (Tr. 1970).

14951

Pacific shows the effects of at least three policies which have served to weaken its financial position:

(1) As of September 30, 1958, Pacific's cash position was diluted by $6,981,951 which represents payment for gas which it could not take from the Big Piney, Hogsback, Tip Top, Bar-X and San Juan Fields, with $5,748,668 being paid for Big Piney gas. This gas will be available now and in the future. If the merger is consummated, this gas would be available to El Paso without cost; thus Pacific's present detriment inures to El Paso's benefit. El Paso has pulled at its own bootstraps to set the stage for the merger.

At the same time Pacific was paying for this untaken gas, El Paso was selling gas to Pacific in the San Juan fields at the rate of 13.51 cents per Mcf, while at the same time it was purchasing gas at the rate of 11.8 cents per Mcf in those fields (Item R-2, pp. 80A, 95F). In 1957 (at a time when the Examiner finds Pacific was operating at a net loss of over two million dollars) Pacific paid El Paso, its *then* parent company, $4,515,160 for San Juan gas and sold El Paso in this Basin gas for which it received $56,095.

(2) Pacific has not received its full cost of service from either distributing companies or pipeline sales. Mr. Copp, Vice-President of Pacific in charge of rates and sales, testified that he knew no reason why the

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pipeline companies (including Mountain Fuel Supply Company, Colorado Interstate Gas Company and, in present

and prospective sales, El Paso) should not pay full cost of service for the gas Pacific delivered (Tr. 2628). Mr. Steen of El Paso testified that he would like to see Pacific obtain its cost of service (Tr. 2072). Yet, Pacific does *not* receive its full cost of service—a fact which the Examiner appears to have overlooked in justifying the merger. Had Pacific received its full cost of service from the pipeline companies alone in the year 1958 it would have received an additional $5,478,675 from Mountain Fuel and Colorado Interstate (Tr. 2759, 2761, Exh. 422) completely changing its financial picture. There is no justification for the failure of Pacific to receive its full cost of service from these pipelines, and as a parent company interested in the welfare of its subsidiary it is not understandable that El Paso would seek to pay Pacific less than its cost of service on the proposed Provo-Las Vegas Line. Yet, the applications of El Paso, Pacific and Colorado Interstate in Docket Nos. G-16235, G-16236, and G-16904, regarding that project, reveal that for the year 1962 Pacific's cost of service including return is $28,091,520 for which it is to receive from its parent, El Paso, *only* $24,714,000. On the other hand, El Paso will pay *full* cost of service, including return, to the third pipeline party to the transaction, Colorado Interstate, for the service it renders. The really amazing aspect of this transaction is that El Paso, on its claimed cost of service, including return,

of $59,510,300 charges the Southern California companies $62,011,281, resulting in a return to El Paso of 8.76 percent (Items H-3, I-3, N-3). With a proper shifting of the income, El Paso, the controlling corporation, could deliver to Pacific a fair return while itself maintaining a valid return. Equitably this process should be undertaken; yet, as projected, Pacific's prospective earnings will appear insufficient.

14954

(3) Pacific, in September 1958 approved a reduction of its revenues to some of its distribution customers (as heretofore discussed, Exception VII). Thus, almost one and one-half million dollars were withheld from its income. One witness indicated that this reduction would eventually inure to Pacific's benefit (or El Paso's if the merger is consummated) because his distribution company would be enabled to attach additional customers (Tr. 2513). Were this to prove true, this reduction in revenues in the past (upon which the Examiner commented) would be counterbalanced by an increase in revenues in the near future (upon which the Examiner neither commented nor took note).

All of these income-depressing policies were a part and parcel of El Paso management decisions. As an independent company, or as a truly distinctive subsidiary, Pacific *could* have, and doubtless *would* have, demonstrated a much more adequate financial return, enabling it to explore for and attach those additional supplies which the Examiner indicates it could not do otherwise.

As to Pacific's "inadequate markets", the Commission's attention is respectfully drawn to the fact that Pacific agreed to a reduction in its revenues by over $1,400,000 in September 1958 (as heretofore discussed in Exception VII) and, as has been pointed out, has consistently failed to receive its full cost of service from its pipeline customers, as it will fail so to do from El Paso upon consummation of the Provo-Las Vegas line, even while El Paso would receive *more than* its cost of service from the California customers for this same gas (a fact which would be hidden by the merger).

14955

Had Pacific not undertaken to receive decreased revenues from these sources, it is submitted Pacific would not in

(14965)

any manner suffer from the full utilization of the capacity of its pipeline. To pass over this assertion by the simple means of saying, "well it was not so", is to overlook the fact that Pacific was manipulated into this position by El Paso. El Paso should not now be allowed to gain the benefits of the bitter fruit it has served to its subsidiary.

X

Exception is taken to the Examiner's statements regarding "Tax Loss Carryover" (page 43, section (b)).

The Examiner correctly recognizes that upon the merging of Pacific into El Paso it would be able to take advantage tax-wise of Pacific's losses. The Commission should carefully note, however, that these benefits would not inure *to the public*. When asked about this, Mr. Kayser responded:

> Q. Well, now, Mr. Kayser, how is this tax saving to which you referred because of the merger, how is that of benefit to the consumer who burns your natural gas?
>
> A. I don't think it is of any benefit to the consumers, didn't say so. (Tr. 1579).

This tax windfall may be of great benefit to the stockholders of El Paso, but it does not help to serve the public convenience and necessity.

The Examiner noted that "it is anticipated that there will probably be some reduction in the net earnings of El Paso for a period after the merger as a result of the temporary income deficiencies from the operation

14966

of the Pacific facilities." Yet, elsewhere in his decision the Examiner attributes to the merger a stronger financial company in better position to immediately *expand* service to Pacific's territory, and the fact that Pacific

would not in 1959 show a deficit. It is submitted that there will be no income deficiency from the operation of Pacific's facilities and assuredly if Pacific received its full cost of service there would be no deficit. The tax loss carryover should not be a consideration by the Commission in assessing the requirements of the public convenience and necessity. It contributes nothing of immediate benefit to the public and even to El Paso's stockholders it will be but a transitory benefit, enduring only so long as the tax losses are present.

XI

Exception is taken to the conclusions set forth by the Examiner in his discussion entitled "More favorable acquisition of debt and equity capital", p. 43.

The Examiner notes that El Paso has an excellent credit rating. However, there is no justification set forth in his decision, nor is any apparent in the record for the conclusion that "El Paso will be in a stronger financial position after the merger than before; and the merged company should be stronger than either El Paso or Pacific as independent corporations." This philosophy that the whole is greater than its parts simply has no support in the record. El Paso will bring to the merged corporation its excellent credit standing; Pacific adds nothing to this but its credit rating which, contrary to the Examiner's conclusions,

remains good. It should be noted that Pacific's bonds carry interest rates of 4¼%, 4⅜% and 5%. Pacific, were it to finance today, would do so as a subsidiary of El Paso and under such favorable terms as this relationship may generate. Were El Paso to divest itself of Pacific at this time, it would have to present an "attractive

package."[9] This new Pacific would have no difficulty in financing. Finally, if Pacific had been left alone and had received its full cost of service, it would have had no difficulty financing (Tr. 1191). El Paso's bonds have a short period of amortization because of its rapid expansion. The merger would not lessen this rate of expansion, but *per se* would be an additional expansion by El Paso. The Examiner's conclusions, it is submitted, are conjectural and without supporting evidence.

XII

Exception is taken to the following statement of the Examiner on page 44:

> In reaching the decision here rendered, it is not found necessary to consider for any purpose the future operation of Pacific as a subsidiary of El Paso. If the merger here approved is finally sustained, Pacific, the corporation, will become extinct. Otherwise, as hereinbefore shown, El Paso will not operate Pacific as a subsidiary, and will divest itself of the Pacific stock. Pacific will then be operated entirely as an independent corporation.

It is submitted that in reaching a decision in this case it *is* necessary to consider the fact that Pacific may remain a subsidiary of El Paso. As heretofore discussed, Pacific has been part of an integrated company ever since El Paso acquired its stock; there are too many advantages available to El Paso by continuing its ownership of Pacific for it to divest itself thereof unless forced to.

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[9] Mr. Fish, El Paso's largest stockholder, testified that if El Paso should divest itself of Pacific it would be "absolutely mandatory" that Pacific be placed in a financially attractive position (Tr. 1197). Mr. Kayser testified that if El Paso were divested of the stock, it would fix up an "attractive package". (Tr. 1667).

It is not for this Commission to be persuaded by the vapid threat of divestment of its stock to the conclusion that the merger is beneficial. It should be remembered that, in the first instance, this Commission had no control over the acquisition of the stock. If independent, Pacific would be financially stable; if a subsidiary, it would have the benefit of any coverage its parent might lend; if merged nothing would be added thereto. The Commission must consider all alternatives in reaching its decision.

XIII

Exception is taken to the following statement of the Examiner at page 49:

> The "flexibility" of operation, as here explained, could not be accomplished to any appreciable extent by cooperation between two separate corporations. It is true that separate natural gas companies have given assistance to each other in situations of emergency, where their pipelines were connected; but there are other periodically occurring situations than the true emergency, which could be quickly and easily handled by having such flexibility of operation, attainable only through central control of operations. This flexibility of operation is clearly an advantage in rendering proper service to the gas consuming public.

14959

The concept of "flexibility" as continually employed by El Paso in the course of the hearing and by the Examiner in his decision remains puzzling indeed. As used by Mr. Kayser, "flexibility" means "the capacity in the line as built and operated to make deliveries in varying quantities at the various spots where it may be needed, and particularly in relation to a shortage in any given source of supply" (Tr. 1541). It is his feeling that this

"flexibility" is less perfectly attained with separate corporations than there would be if merger took place, even though one can obtain a "substantial measure of flexibility" as presently operated (Tr. 1542).

The elemental fact that pipelines are built, and certificated, to transport a contract demand is glossed over by El Paso, and not commented upon by the Examiner. If El Paso is seeking "flexibility" of operation, it will have to construct extra capacity to attain it; in so doing it will construct idle capacity which simply is too costly to the consumer. Pipelines operate, or seek to operate, at as near maximum capacity as possible. Failure so to do is not in keeping with the public interest. If Mr. Kayser desires to build in "flexibility" he will be adding an unwanted detriment.

Such "flexibility" (and the term rings magically until the true picture is unveiled) as would be available in the merged company is equally attainable in the parent-subsidiary relationship. As with so many of the other asserted benefits of the merger, it has already been achieved by El Paso.

XIV

Exception is taken to the conclusions reached by the Examiner on pp. 49-50 in his discussion entitled: "Deferral and Reduction of Increases in Pacific's Rates."

The Examiner states, "Pacific has had a serious problem in trying to better its financial position by obtaining more revenue from additional customers without deterring its prospective customers with higher rates."

He continues in a subsequent paragraph: "It was the unanimous opinion of past and present officers of Pacific, who appeared as witnesses, that it would have been necessary for Pacific to file for even higher rates than it is now collecting if it had continued as an independent company."

As hereinabove pointed out, had Pacific obtained its full cost of service from its pipeline customers, about which there was no fear of customer resistance, Pacific would be in an entirely different position. In fact, if full cost of service were received from them *there would be absolutely no need for any additional rate increase for the distributor customers* in the Pacific northwest. Such full cost of service was not sought by Pacific in its application for a rate increase filed on August 6, 1957. At that time Pacific was under the control of El Paso and subject to its desires. When Mr. Kayser now gives assurrance that no new rate increases will be sought from Pacific's present customers for a year, during which time studies will be made, he gives no assurance for the

period immediately following. It is more than likely that he will seek full cost of service since there will no longer be any advantage to depressing Pacific's earnings; there is no reason why such should not be immediately sought. If full cost of service were obtained from the pipeline customers by Pacific, it could well afford to defer rate increases to its distribution customers, *contra* the Examiner's decision.

El Paso acquired Pacific to better serve its California customers (Tr. 1429). It has failed to demonstrate any market, aside Eugene, Oregon to which it would extend facilities during this one-year period in which Mr. Kayser has indicated no rate increase would be sought. It is submitted that the merger would give no such benefit as the Examiner envisages with regard to rates for the Pacific consumer; certainly in the long range view a one-year deferral is not so substantial as to justify favorable action on the merger.

XV

Exception is taken to the following statement of the Examiner on page 52, and to the reasons he set forth therefor:

> . . . all evidence relating to future rates to be charged on the unified system is irrelevant to the basic issues of whether the merger is in the public interest.

In so holding the Examiner overlooked what is perhaps the fundamental issue in these entire proceedings and that is the economic evaluation of the effects of the merger and whether as a result of the merger some segment of the public would be economically prejudiced.

Certainly there has been no attempt to turn this case into a rate proceeding by the staff or any other party. However, in any certificate proceeding certain aspects of costs must be looked into in order to determine whether the public interest will be served.[6] The Examiner assiduously weighed the savings in costs he believes would be realized upon consummation of the merger, but he expresses antipathy to a determination of what shifting of costs and burdens there would be between the customers of the two systems upon consummation of a merger. The record in this case attests to a deficiency in Pacific's revenues.[7] The economic consequences of this fact upon the various classes of consumers is a prime consideration. In deciding this case, the Commission must observe the effect of the merger *upon the ultimate consumer*. It must con-

[6] See Order Denying Applications for Rehearing, *Transcontinental Gas Pipe Line Corporation, et al.*, Docket No. G-12059, *et al.*

[7] This deficiency, as staff has heretofore demonstrated, need not have been acquired and is subject to correction by the obtaining of full cost of service from Pacific's pipeline customers.

sider what costs will be charged and which consumers will ultimately pay such costs in the future. Should there be a shifting of costs from one group of consumers to another resulting from the merger, it is incumbent upon Applicants to justify this. In the instant case,

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as shown in staff's brief and as hereinafter set forth, there *will be* a shifting of costs occasioned solely by the merger of Pacific into El Paso and the formation of an integrated company. This will result in an adverse effect upon the California consumers which is not justified. A full comprehension of this fact is essential to an understanding of the effect of this merger. In failing to consider this important facet, the Examiner missed the most crucial issue in this case.

El Paso has continually asserted in the record that it was its intent to operate its system, as combined with Pacific, on an integrated, unified basis, and that Pacific was acquired to give El Paso access to its supply areas, including Canada. In presenting its case, El Paso set forth suggested methods for treating the costs of Pacific as merged into the El Paso system. Production costs would be rolled together on a system-wide basis (Tr. 1767-1768). El Paso would have the Commission zone its transmission costs (Tr. 615). However, such segregation of physical property and costs has never been acceptable to the Commission on a fully integrated system.

Following the methods consistently espoused for integrated systems by the Commission, Mr. Simonds, a public utilities specialist in the Bureau of Rates and Gas Certificates, presented exhibits 420 and 421 which demonstrated an allocation of costs to the various zones on the El Paso system (Tr. 2755-2757). These studies clearly show that if such method is applied to the merged company the California consumers will

incur *substantial* costs in excess of what would be attributable to them in the absence of a merger. (See also Staff Brief p. 43 where comparative figures are set forth; see PG&E Brief pp. 13-14.)

The shifting of these costs to the California consumers who rely so heavily upon El Paso's service is inequitable and prejudicial to their interests. The immediate shifting of the costs incurred by Pacific to the California consumers will undoubtedly result in a higher rate for these consumers. The "benefits" which Mr. Kayser has indicated would be available to all customers as a result of the merger, although not immediately obtained by the California consumers and which remain beyond their reach for many years, if ever attainable at all, will be paid for by those consumers immemdiately.

That the California companies recognized the inequities involved is apparent by the suggested conditions they set forth in their briefs. Both the Southern California gas companies (Southern Counties Gas Company of California and Southern California Gas Company) and PG&E were disturbed by the shifting of costs occasioned by the merger. The means they suggest for the control thereof do not reach far enough. The only adequate control for the shifting of these costs will be by a denial of the requested acquisition of Pacific's assets by El Paso.

The accounting condition imposed by the Examiner does not alleviate the heavy burden shifted to the California consumers. As a practical matter it is an impossibility to separate out the costs attributable to

the Pacific system if an integrated pipeline system is in operation. It is for this very reason that the Commission adopted its policy of allocation of costs in preference to segregation of costs. The arbitrary separation as recom-

mended by the Examiner of Pacific into three "systems" will not distill the costs allocable only to those "systems", since the gas will be coming from various sources at the same time.

CONCLUSION

Accordingly, it is respectfully requested that the Commission reverse the Examiner's findings and conclusions and deny El Paso's application to acquire and Pacific's application to abandon Pacific's assets and facilities.

Respectfully submitted,

WILLIAM I. HARKAWAY
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[Certificate of Service omitted in printing]

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(Received December 7, 1959)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matters of
PACIFIC NORTHWEST PIPELINE CORPORATION
Docket No. G-13018

EL PASO NATURAL GAS COMPANY
Docket No. G-13019

Exceptions of the State of California to Decisions of Presiding Examiner

Comes now the State of California, intervener herein, submits herewith exceptions to the Decision of the Presiding Examiner issued November 20, 1959, in the above entitled matter.

INTRODUCTION

The State of California has an interest in this proceeding which is paramount to that of any other intervener and, indeed, sofar as the public interest is concerned, greater than that of either or both of the applicants.

California from the outset of this case has bespoken its opposition to the merger. The testimony adduced before the Examiner has only served to fortify the position of California in opposition to merger. Accordingly, California takes exception to the proposed Decision of Presiding Examiner, Daniel J. Kelly, in the above entitled proceeding and for the reasons which shall be set forth herein:

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Exception No. 1

California excepts to the language found in paragraph 1, page 8 of the Decision, to wit: "The record evidence shows clearly that El Paso is able and willing properly to perform the acquisition and operation of the facilities of Pacific and, in so doing, to conform to the provisions of the Act and lawful regulations thereunder. . . ."

Proposal

California would insert in this Decision the following language:

"Because El Paso cannot consistently with the public convenience and necessity acquire and take over the Pacific Northwest system, it cannot conform to the provisions of the Act."

Exception No. 2

California excepts to the language found in paragraph 3, page 17 of the Decision, to wit: "It is found herein-

after that the attachment to El Paso's expanding markets of these two great sources of natural gas is definitely in the public interest."

Proposal

California would insert in this Decision the following language:

"It is not in the public interest to make the Canadian reserves available to El Paso's customers by a merger operation."

14995

Exception No. 3

California excepts to the general discussion commencing on page 19 of the Decision, "The Clayton Act" and specifically to the portions thereof which find that the merger is not contrary to the provisions of Section 7 of the Clayton Act.

Specifically, California takes exception to the language found in paragraph 3, page 24 of the Decision, to wit: "The position is taken by California and the Staff that the benefits to the public claimed to result from the merger, may be obtained just as well by contractual dealings between El Paso and Pacific as separate corporations, with the Commission exercising its regulatory powers over such dealings. The evidence does not sustain this position and there are distinct benefits to the public from the merger not attainable by the two corporations dealing separately with each other."

Proposal

California would insert in this Decision the following language:

"All of the related benefits of merger are in fact possible by the device of contract."

Exception No. 4

California excepts to the language found in paragraph 3, page 31 of the Decision, to wit: "The elimination of Pacific as a competitor for the purchase of gas in the producing fields is

not of great consequence when there remain other strong competitors for gas in all producing fields to which the unified company will have access. Such elimination of Pacific will do no real harm to the public interest."

Proposal

California would insert in this Decision the following language:

"The acquisition of Pacific by El Paso and the elimination of Pacific as a competitor is contrary to the public convenience and necessity and will do harm to the public interest."

Exception No. 5

California excepts to the language found in paragraph 1, page 33 of the Decision, to wit: "It is definitely in the public interest that California, and all other states served by El Paso and Pacific, have supplies of natural gas adequate to their present and foreseeable future needs."

Proposal

California would insert in this Decision the following language:

"While it is in the public interest for California to have access to the Canadian reserves, such reserves are available to El Paso and have been by contract arrangements prior to merger and can be made independent of merger."

Exception No. 6

California excepts to the language found in paragraph 3,

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page 33 of this Decision, to wit: "The connection of the El Paso system to the newer and undeveloped fields accessible to Pacific's pipelines will be of great advantage to the consumers in its markets."

PROPOSAL

California would insert in this Decision the following language:

"The public convenience and necessity are not served by the fact of connection between El Paso and Pacific and the merger. Underdeveloped fields in the Pacific System and the reserves therein can be made available by contract independent of merger."

EXCEPTION No. 7

California excepts to the language found in paragraph 2, page 34 of the Decision, to wit: "It is unquestionably in the public interest that the greatly expanding California market have access to the additional reserves economically accessible to Pacific's existing transmission facilities."

PROPOSAL

California would insert in this Decision the following language:

"Despite California's possible interest in access to additional reserves, such reserves are available through the device of contract and do not justify authorizing this merger."

EXCEPTION No. 8

California excepts to the language found in paragraph 1, page 37 of the Decision, to wit: "There is no doubt from the

evidence here that the connection of the Pacific system to that of El Paso will strengthen greatly El Paso's ability to render satisfactory natural gas service to its present markets. At the same time the total system gas supply, now available and to be expected from exploration, will be of advantage to the consumers in all the markets on the combined system. It is, indeed, in the public interest that a pipeline should have a truly adequate gas supply to meet all of its system requirements for a good number of years in the future."

PROPOSAL

California would insert in this Decision the following language:

"The acquisition of the Pacific system by merger will weaken El Paso's financial condition, and has, in fact, already done so. Merger will not improve El Paso's ability to render specific natural gas service. While it is true that a pipeline should have a truly adequate gas supply, this is no reason to authorize a merger in this case."

EXCEPTION No. 9

California excepts to the language in paragraph 2, page 40, of the Decision, to wit: "This cannot fail to make natural gas available to the customers of the unified system at lower capital cost."

PROPOSAL

California would insert in this Decision the following

language:

"Merger will result in increasing gas costs to customers of El Paso, particularly California rate-payers."

EXCEPTION No. 10

California excepts to the discussion commencing on page 41 under the heading "A Financially Stronger Gas Supplier." The record in this case is clear that one of the reasons El Paso seeks this merger is to make the Pacific system whole. Such is unnecessary and the record demonstrates that Pacific in time can become a financially solvent pipeline corporation independent of any aid from El Paso. The evidence herein shows that one of the most harmful effects of merger will be not the strengthening of Pacific, but the weakening of the financial integrity of El Paso.

California strongly objects to being placed to "bail out" Pacific. This is actually what the merger will do and, indeed, when the Examiner states at page 43: "This merger of the two companies into a financially strong natural gas company cannot fail to bring very much earlier to the Pacific Northwest that type of natural gas service to which it is entitled as a part of the gas consuming American public." He is stating, actually, California's function in the new merged corporation.

Accordingly, California objects to that portion of the discussion herein referred to which states that the merger will aid Pacific and will result in a stronger single company.

15000

PROPOSAL

California would insert in this Decision the following language:

"The merger has increased the dividend requirements of El Paso, it has increased the outstanding common stock of El Paso without a corresponding increase in revenue to make Pacific financially whole. A rate increase must be imposed upon the El Paso system the merged portion of which is composed of California consumers. The merger

plan is no more than a device whereby California consumers will subsidize the natural gas requirements of Pacific Northwest States and gas consumers. Such a merger is not in the public convenience and necessity. It should be denied."

EXCEPTION No. 11

California excepts to that portion of the Decision entitled "Tax Loss Carryover," page 43.

PROPOSAL

California would insert in this Decision the following language:

"The tax savings which El Paso will be granted by merger are for the sole benefit of the stockholders thereof and do not in any way benefit the customers of El Paso."

EXCEPTION No. 12

California excepts to portion of the Decision entitled "More Favorable Acquisition of Debt and Equity Capital," page 43.

15001

PROPOSAL

California would insert in this Decision the following language:

"Since any alleged or assumed improvement of the financial difficulties of Pacific will be primarily at the expense of the present customers of El Paso system, the merger is not in their interest, nor in the public interest and should be denied."

EXCEPTION No. 13

California excepts to the paragraph of the Decision entitled "Disadvantages of Parent-subsidiary Relationship," page 44.

PROPOSAL

California would insert in this Decision the following language:

"Since throughout the hearings herein applicants have asserted repeatedly their concern with benefiting the public, their sincerity can be tested by maintaining control of Pacific as a subsidiary corporation. The record shows that El Paso presently and for some time has owned and controled in an efficient manner many other subisdiary corporations all related to the oil and gas business. El Paso, if it elects, may do the same here."

EXCEPTION No. 14

California excepts to that portion of the Decision entitled "Expanded and Improved Gas Service," page 45.

PROPOSAL

California would insert the following language in the

Decision:

"Any claimed expanding or improving gas service or additional service to California does not justify approval of this merger."

EXCEPTION No. 15

California excepts to that portion of the Decision entitled "Benefits to Pacific's Present Customers," page 47.

PROPOSAL

California would insert the following language in the Decision:

"Pacific's present customers will have the advantage at the expense of California rate-payers of having to bear alone the costs of long hauls of natural gas. Because this

merger will merely impose Pacific's costs upon California without corresponding benefit to California the merger should be denied.

EXCEPTION No. 16

California excepts to that portion of the Decision entitled "Flexibility of Operation," page 48.

PROPOSAL

"Any claims or asserted flexibility of operation can be aranged by contract between El Paso and Pacific Northwest and does not require merger to accomplish same."

EXCEPTION No. 17

California excepts to that portion of the Decision entitled "Lower Rates in Prospect," page 49.

15003

PROPOSAL

California would insert in this Decision the following language:

"There is no evidence that Pacific's customers will gain lower rates through merger."

EXCEPTION No. 18

California excepts to that portion of the Decision entitled "Savings in Operating Expenses," page 50.

PROPOSAL

California would insert in this Decision the following language:

"The evidence shows no savings, substantial or otherwise, as a result of the merger."

EXCEPTION No. 19

California excepts to that portion of the Decision entitled "Reasonable Anticipation of Lower Rates," page 51.

PROPOSAL

California would insert in this Decision the following language:

"The record contains no evidence of lower rates to El Paso's customers, on the contrary, the uncontradicted evidence in the record discloses that rate increases are necessary to make the merger system financially solvent."

15004

EXCEPTION No. 20

California excepts to that portion of the Decision entitled "Future Rates," page 52, particularly wherein after discussing the possibility of lower rates presently or in the future the Examiner goes on to make it quite clear that this is not a rate proceeding and El Paso will have every right pertaining to its future rates that the Natural Gas Act gives to it.

California excepts to the failure of the Examiner after approving the merger, to impose the conditions required by the Pacific Gas and Electric Company on behalf of itself and its customers.

PROPOSAL

California would insert in the Decision the following language:

"The uncontradicted evidence shows that El Paso and the savings as claimed, as well as possible rate reductions are illusory. The record shows that El Paso in the near future will file for a general rate increase whether merger

is approved or not. In fact merger, if allowed, will compel a general rate increase application. For this reason merger should be denied.

The exceptions requested by the Pacific Gas and Electric Company should be allowed in the event merger is approved.

EXCEPTION No. 21

California excepts to that portion of the Decision entitled "Pacific's Application," page 54, particularly wherein the

Examiner recommends that the certificates previously issued to Pacific be rescinded and new certificates issued to El Paso.

Proposal

California would insert in the Decision the following language:

"The application of Pacific for permission to abandon its facilities and services should be denied and the certificates of Pacific should not be rescinded."

Exception No. 22

California excepts to that portion of the Decision entitled "Conditions," on page 56, and "Supplemental Accounts for Cost Allocation," on page 59.

Proposal

California would insert in the Decision the following language:

"In the event this merger is authorized, such conditions shall be imposed upon El Paso as will require it to main-

tain separate books of accounts, records, or financial data as will enable this Commission to segregate and separate the costs of Pacific from the costs of El Paso. Such conditions should be imposed as will enable this Commission to confirm the costs of acquisition of natural gas by Pacific Northwest customers to such customers. Such appropriate conditions should be imposed as will insure that California rate-payers will not be compelled to pay any costs attributable to the Pacific Northwest purchase of the

merged system."

Exception No. 23

California excepts to that portion of the Decision entitled "Conclusion" and "Order," page 60.

Proposal

California would insert in the decision the following language:

"The record is clear that applicants have not sustained the burden of proof, and that the requested merger is contrary to the public convenience and necessity and violates Section 7 of the Clayton Act."

WHEREFORE, it is ordered that the applications be, and they are hereby, denied.

Respectfully submitted,

WILLIAM M. BENNETT
(William M. Bennett)
Special Counsel for the State of
California; Chief Counsel for the
California Public Utilities Commission.

15007-15011

[Certificate of Service omitted in printing]

15024

Docketed Dec. 23, 1959

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

In the Matters of

PACIFIC NORTHWEST PIPELINE CORPORATION	Docket No. G-13018
EL PASO NATURAL GAS COMPANY	Docket No. G-13019

Order Issuing Certificates of Public Convenience and Necessity Authorizing Merger With Conditions and Adopting With Modifications the Decision of the Presiding Examiner

(Issued December 23, 1959)

As set forth fully by the presiding examiner, El Paso Natural Gas Company (El Paso) seeks by its application in Docket No. G-13019, a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing it to acquire and operate all of the facilities and properties of Pacific Northwest Pipeline Corporation (Pacific), subject to the jurisdiction of the Commission, by the merger of the two corporations. Pacific has filed a companion application in Docket No. G-13018, by which it seeks permission under Section 7(b), to abandon the same facilities and the service rendered by them, in order to complete the merger.

In his decision issued November 20, 1959, the presiding examiner ordered, subject to review by the Commission, the issuance of certificates authorizing the merger con-

ditioned to require that certain accounting records be kept separately for the present El Paso system and present Pacific system and for three separate parts of the present Pacific system. He denied Pacific's application to abandon facilities and services since he determined that the proposed merger did not represent an abandonment, but granted Pacific authority to bring about its merger into El Paso. In this order we are approving the merger and adopting the presiding examiner's decision with a condition requiring that tax savings resulting from tax loss carry-overs from the books of Pacific be credited to a special reserve for the benefit of consumers and with record keeping conditions somewhat modified from those recommended by the presiding examiner.

PROCEDURAL AND FACTUAL BACKGROUND

There is no need here to describe at length the background of this proceeding, for this has been done by the presiding examiner. However, it may be observed that El Paso is a Delaware Corporation with its principal place of business at El Paso, Texas. Its principal transportation

facilities constitute a single intergrated system. It operates pipelines extending from the Permian Basin area of western Texas and eastern New Mexico across the southern portions of Texas, New Mexico and Arizona to Blythe, California. It also operates pipelines extending from the Permian Basin area across the central portion of New Mexico to the San Juan Basin area and from there across the northerly portion of Arizona to the California border near Topock, Arizona. These pipelines are interconnected in the Permian Basin area at Plains, Texas and by two cross-over lines located in Central and

Western Arizona. In the Permian Basin area its system is supplied with gas originating in the Panhandle area of Texas as well as Permian Basin sources of supply.

In addition to the supplies of gas obtained in the Permian Basin and the Panhandle areas of Texas, El Paso also obtains supplies in the San Juan Basin area. A comparatively small volume of Canadian gas is purchased from Pacific at the Canadian border. Under an exchange agreement, such volumes are immediately redelivered by El Paso to Pacific, which in turn, delivers equivalent volumes to El Paso in the San Juan Basin area. El Paso sells gas to various communities and distributing companies in Texas, New Mexico and Arizona with approximately 80 percent of its gas sold for consumption in California. Gas for consumption in California is delivered to Southern California Gas Company and Southern Counties Gas Company (Southern California Companies) at Blythe, and to both these companies and Pacific Gas and Electric Company (P.G. & E.) at Topock.

The Pacific Northwest Pipeline Corporation is also a Delaware Corporation and has its principal place of business in Salt Lake City, Utah. It owns and operates a pipeline system commencing at Ignacio, Colorado, in the San Juan Basin, where it is interconnected with El Paso's northern pipelines and extending through the states of Colorado, Utah, Wyoming, Idaho, Oregon and Washington to its northern terminus at Sumas, Washington. In addition to this main pipeline, it has several lateral lines of varying lengths projecting from it to certain markets and sources of gas supply. Pacific produces natural gas from its own leaseholds and purchases gas from other producers in the San Juan Basin and in various fields of the Rocky Mountain area. It also purchases natural gas from Westcoast Transmission Company, Ltd. at the Canadian border.

In addition to the exchange agreement relating to Canadian Gas. Pacific and El Paso have also entered into an agreement by which they use jointly their gathering facilities in the San Juan Basin, and another, by which El Paso made available to Pacific, gas from the San Juan Basin to be returned by the delivery of equivalent quantities in the future.

At about the time that El Paso was contracting with Pacific concerning Canadian gas, it entered into negotiations with Pacific for the

acquisition of Pacific's assets. Pacific, however, did not want a Section 7(c) merger proceeding before it had completed organization and financing, and refused to enter into such a transaction. After further negotiations, an agreement was executed by which El Paso would acquire the stock of Pacific by a tax-free exchange of shares. By May 1, 1957, when the offer of exchange was closed, El Paso had acquired 99.8 percent of the outstanding stock of Pacific. The record shows that the primary purpose of the acquisition was to gain access to the vast and relatiyely untouched Canadian gas reserves for El Paso's markets, and to gain access to the reserves of the Rocky Mountain area.

After the stock acquisition had been completed, El Paso's management decided, upon the basis of its experience, that the operation of the two systems as an integrated unit could be done more efficiently than by separate operation of the two coporations, and on July 16, 1957, the board of directors of both corporations, authorized the filing with the Commission of applications for certificate authority for a merger. It was made clear that these applications were stimulated by the fact that the Attorney General of the United States was prepared to file an antitrust suite with respect to the stock acquisitions. The antitrust

action was filed on July 22, 1957, in the United States District Court for the District of Utah, and the certificate applications were filed with the Commission on August 7, 1957.

In accordance with the applications, Pacific would be merged into El Paso under the provisions of Section 253 of the Delaware General Corporation law. The outstanding shares of Pacific's common stock, now in the hands of the public, would be acquired on the same basis as the stock previously acquired and all common stock of Pacific would be cancelled. All outstanding preferred stock of Pacific would be called and indebtedness of Pacific to El Paso would be cancelled. Upon the accomplishment of the merger the corporate entity of Pacific would be extinguished, and El Paso would own and operate its facilities with those of Pacific as a single integrated pipeline system under one central management. All contracts for sales to the present customers of both companies would be performed by El Paso and existing rates would be unaffected by the merger transaction.

After interventions by a number of parties, including customers of El Paso and Pacific and a number of states or state commissions[1] a hearing was set for September 17, 1958. The Attorney General of California moved that the proceedings be stayed until the antitrust issues before the District Court were resolved. Upon considering the interests of all parties, the Commission denied this motion by order issued September 15, 1958,

20 F.P.C. 357. On the other hand, the District Court, by order of October 13, 1958, stayed its own proceedings until a final determination had been made by the Commission in

[1] Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming.

the present dockets. The hearing commenced as scheduled on September 17, 1958 and covered 23 days with adjournments until January 6, 1959. After the filing of briefs, the presiding examiner issued his decision on November 20, 1959.

The presiding examiner, as already noted, approved the merger with conditions as to the segregation of accounts. Exceptions were filed by the State of California and our staff, opposing the merger, and by P.G. & E. not supporting the merger nor opposing it, providing that a condition be imposed that the costs of Pacific's system not fall on the California customers. Upon the basis of the briefs, the exceptions, and oral argument before us on December 10, 1959, we shall adopt the reasoning of the presiding examiner as set forth in his decision and discussed briefly below in the light of the exceptions.

The Antitrust Problem

Section 7 of the Clayton Act,[2] under which the antitrust suit was brought, prohibits the acquisition by one corporation of the stock or assets of another corporation where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly". Exempt, however, are transactions consummated pursuant to Commission authority. This shows, reasons the presiding examiner, that Congress placed reliance on the Commission not to approve an acquisition of assets in violation of the injunction of the Clayton Act, unless in the carefully exercised judgement of the Commission, the acquisition would nevertheless be in the public interest. What we are attempting to arrive at is the public convenience and necessity. In reaching our determination, we do not have authority to determine whether a given transaction is in

[2] 15 U.S.C. § 18.

violation of the Clayton Act, but we are required to consider the bearing of the policy of the antitrust laws on the public convenience and necessity. *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 754 (CADC). With the presiding examiner, we find that any lessening of competition whether in the consumer markets or the producing fields, does not prevent our approving the merger because there are other factors which outweigh the elimination of Pacific as a competitor. In any case, it appears that any lessening of competition is not substantial.

As discussed fully by the presiding examiner, Pacific sought to compete with El Paso only in the California market, but because of its initial financial difficulties did not threaten immediate or substantial competition in this market. But, irrespective of the merger, there is additional competition in prospect. The Commission, on August 10, 1959, issued a certificate to Transwestern Pipeline Company,[3] authorizing it to construct a pipeline from the Panhandle-Hugoton field and Permian Basin to a point on the California-Arizona border near Topock, Arizona, where gas will be delivered to Pacific Lighting Gas Supply Company, which, in turn will

transport and sell the gas in California to the Southern California Companies. Furthermore, there is pending before the Commission in Docket No. G-17350, the application of Pacific Gas Transmission Company, which proposes to build a pipeline to transport Canadian produced gas from a point on the border near Kingsgate, British Columbia, to Klamath Falls, Oregon, near the border of California where connection will be made with the facilities of P.G.&E. While this latter project has not been approved

[3] *Transwestern Pipeline Co.*, 22 F.P.C. ...., Op. No. 328, August 10, 1959.

by us it indicates, at least, a tendency for competition to develop for the California market.

With respect to the competition for natural gas supply, Pacific will, of course, be eliminated, but would probably not have been a competitor with El Paso in the Permian Basin or the Panhandle-Hugoton area. On the other hand, Southern Union Gas Company obtains gas in the San Juan and Permian Basins. Transwestern may well become a competitor in the San Juan Basin, and the Aneth field, in view of the proximity of its projected pipeline. In the Rocky Mountain area, competition will likely come from Colorado Interstate, Mountain Fuel Supply Company and others, in Canada from Pacific Gas Transmission Company and others.

In view of this competitive situation set forth by the presiding examiner and briefly described above, the exceptions of California and the staff of this Commission are not well taken on this point.

The Public Interest

Coming to the advantages of the proposed merger, the presiding examiner finds that the merger is in the public interest from the standpoint of (1) improved gas supply and utilization of gas reserves, (2) a financially stronger gas supplier, (3) expanded and improved gas service and (4) lower rates.

A. *Improved Gas Supply and Utilization of Gas Reserves* —The record shows, as recounted by the presiding examiner, that California has a continuing and increasing demand for gas, and is now importing in excess of 2,000,000 Mcf per day. The present sources of supply for this imported gas are the San Juan Basin, the Aneth Field, the Permian Basin and the Panhandle area of Texas. As set forth in our orders issuing certificates to El Paso in the Docket Nos. G-10499 (16 F.P.C. 1354), G-11797 (19

F.P.C. 393) and G-12580 matters, El Paso is in need of additional supplies of gas in order to continue rendition of service to California. The merger constitutes a step in the direction of increased supplies of gas. As we pointed out in our Opinion No. 271, issuing the original certificate to Pacific,[4] Pacific's pipeline traverses a region containing sedimentary basins that promise development of future gas reserves. Since the time of construction of Pacific's line exploration and development of the area have been stimulated. Through the merger and the addition of El Paso's markets further stimulus to development will be given. By comparatively minor construction, the flow of gas on portions of Pacific's system can be reversed so that gas may flow southerly from Rocky Mountain sources to El Paso's existing system. The present connection between El Paso and

Pacific in the San Juan Basin, can also be strengthened by further comparatively minor additions. As a result, there would be a pipeline system extending from West Texas to Canada, fully unified and having many sources of supply available to serve the combined system markets, and to benefit all consumers.

There is a further problem that is mitigated by the proposed transaction. El Paso's principal sources of supply are in the Permian Basin area where large volumes of gas are produced in conjunction with oil. Because of variations in the production of oil, due to local regulation, it is necessary to supplement the residue gas sources with dry gas. On the other hand, Pacific's supply is primarily dry gas. Thus El Paso, which now has the greatest dependence upon residue supplies of any natural gas company, will reduce

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[4] *Northwest Natural Gas Company*, et al., 13 F.P.C. ...., Op. No. 271, Docket Nos. G-996 et al, issued June 18, 1954, mimeo p. 16.

its dependence upon the vagaries of oil production. This in turn, through better scheduling of supplies, will aid conservation, lengthen life of reserves, and assist El Paso in marketing bonds having a longer maturity life.

In its exceptions, the staff contends that El Paso has shown in another proceeding[5] that it did have a sufficient gas supply. However, we are here concerned with El Paso's increasing its gas supplies for the indefinite future. The staff also argues that the same results with respect to gas supply, could be achieved through the parent-subsidiary relationship, and California argues that a like result could be achieved through contractual arrangements. However, the record shows that El Paso intends to dissolve the parent-subsidiary relationship if the merger is not achieved, and it seems obvious to us that El Paso will have greater opportunity of acquiring additional reserves in the Rocky Mountain area or Canada if Pacific's pipeline belongs to it, than if Pacific's pipeline is independent.

B. *A financially stronger gas supplier*—The presiding examiner recounts how Pacific has shown financial weakness and was operating at a loss in 1957 and 1958 after payment of preferred dividends. While he thinks the corporation would survive and its financial picture would improve, he was clearly right in concluding that the merged company would have a vastly better financial standing than Pacific, which would have found it costly, if not impossible, to obtain debt and equity capital. Even El Paso would be in a stronger financial position than before because of its being able to acquire new gas reserves, particularly dry gas, and the merged company would be able to attract capital upon favorable terms. While some

[5] *El Paso Natural Gas Company*, ... F.P.C. ...., Op. No. 333, Docket No. G-12580, issued November 27, 1959.

of the testimony indicates that Pacific's low earnings may be somewhat of a handicap for several years, this would appear to be temporary and would disappear when greater use is made of Pacific's pipeline. We therefore,

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do not adopt the contentions made by California that the result of the merger will be the weakening of the financial integrity of El Paso.

The staff argues that Pacific's financial condition shows the effect of deleterious policies pursued at the behest of the parent company, El Paso. It points to advance payments for gas, failure to effect rate increases and reductions in contract demands to certain customers. It appears that the advance payments were necessary because of temporary lack of capacity to take contract volumes, that rate increases would have prevented development of Pacific's markets, particularly industrial loads and that the reductions in contract demands would in the long run result in greater sales. Management's judgment in these matters results from actual market conditions and not from a plot to weaken Pacific. These are the problems which can be more easily overcome when Pacific is merged with El Paso.

In connection with the financial effects of the merger, it is noted that El Paso is entitled under the Internal Revenue Code of 1954, to utilize for Federal income tax purposes, a tax loss carry-over of $23,734,923.00, representing net operating losses incurred by Pacific prior to January 1, 1957. Of this loss carry-over, applicants state in their Motion Regarding Time for Filing Exceptions and Hearing Oral Argument, that $9,019,000.00 is attributable to the year 1955, although only part of this amount would be available to Pacific if the merger is not consummated by December 31, 1959. Since such losses can carry forward for only five years, Pacific has not and probably will not

be able to obtain any advantage from a large part of the total carry-over, for it has not and apparently will not have sufficient taxable income within that time. There will thus result from the merger, tax savings amounting to 52 percent of the tax loss carry-over. Of course, in determining the effect of the merger, there should be deducted from the available tax loss carry-over that part of it which could have been utilized by Pacific if there had been no merger. We are of the opinion that the merger will be more truly in the public interest if tax savings inure to the benefit of the ultimate consumers of the gas of the merged corporation.

To insure that the savings are retained for our purpose, we shall require that the merged corporation establish and maintain a special reserve upon its books of account in such amount as shall equal the amount of all tax savings resulting from the merger, less the amount which could have been realized by Pacific if there were no merger. After the consummation of the merger, El Paso will be required to file in this proceeding, a plan providing for the disposition of such reserve, including amounts that may be credited to it in the future, for the benefit of the ultimate consumers of the gas of the merged corporation. With such a plan before us, we shall be able to order an appropriate disposition of the amounts credited or to be credited to the special reserve.

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C. *Expanded and Improved Gas Service*—We agree with the presiding examiner that the merger will not only make available additional supplies of gas for service to California and other markets, but will make better use of the capacity of Pacific's system and will provide an increased flexibility of operation from the combined system; particularly, after the construction of further facilities. This

flexibility is necessary because of demands of the various markets and the availability of sources of supply changing from day-to-day and will be effected by central control of the combined systems so that the demands may be met from the sources of supply available. Control of this flexibility could not readily be achieved if the two corporations were separate and independent. It could be achieved more easily, between affiliates, but not as economically as by one corporation, in view of the evidence of savings arising from the merger as discussed below.

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P.G.&E. vigorously contends that the merger will not make the gas supplies of Pacific's system available to El Paso's present customers, including P.G.&E., without the construction of extensive pipeline facilities and contends further that the merger will not result in flexibility of operation including the ability to supplement residue gasses with new sources of dry gas. As previously indicated, comparatively minor piping facilities at Pacific's existing compressor stations would enable gas to flow in either direction in the existing Pacific system. As also shown, comparatively minor increased interconnecting facilities in the San Juan Basin would permit gas to flow directly from Pacific into the existing El Paso facilities connecting San Juan with the California markets. Thus supplies available on the Pacific system could be used to supplement El Paso's present supply for its northern pipelines which now largely comes from either Permian or San Juan Basins. In a similar manner, gas could move north from El Paso's present system to supplement Rocky Mountain or Canadian supply in case of emergency. In any event, if the continuing increased demands for gas in California are to be made available, new construction must be undertaken by El Paso or some other company.

As above indicated, the failure of supply on any part of the combined system can be alleviated to some degree by gas available to other parts. While present conditions would limit this effect, we cannot appraise the proposed merger from a narrow viewpoint but must look to the future when gas supplies north of El Paso's present system become more important as Permian and San Juan reserves decrease and when additional facilities are built to provide free movement of gas north and south.

D. *Rate questions*—The strongest motive for attacking the presiding examiner's decision seems to be the fear that the cost of service will continue to be high for gas originating on the present Pacific system and the cost differential will be imposed on El Paso's customers in California. We agree with the presiding examiner that, in the first place, the merger will result in savings that will tend to lower rates or prevent them rising more than they would otherwise. The record indicates savings by the elimination of duplication in service functions and also savings in future financing of the merged company, with respect to both debt and equity capital. It was testified that the rate increase filed by Pacific on August 6, 1957, would have been higher if it had continued as an independent company.

As the presiding examiner shows, the merger will not of itself result in any rate change, and El Paso does not propose to make any change in its filed rates or Pacific's filed rates as a result of the merger. In fact, El Paso's president gave assurance that no new rate increases to Pacific's present customers would be filed with the Commission for at least one year from the date of the approval of the merger by the Commission. Thus any effect which the merger may have on rates is not before us at this time. It will necessarily have to be settled in another proceeding.

In their exceptions and oral argument, California, P.G.&E. and the staff have objected variously to the presiding examiner's not taking into account what they consider to be an inevitable shift of the costs from Pacific to El Paso's California customers. They argue that El Paso has treated the combined system as an integrated one that would be subject to the system-wide method of allocating costs with the result that Pacific's costs would be "rolled in" and would affect all of El Paso's present customers. This issue of allocation, of course, is one for a rate proceeding. It is a matter for our judgment based upon all the facts before us concerning the operation of the merged system.

The presiding examiner has recommended, in accordance with the contentions of the Southern Companies, that a condition be attached to approval of the merger which would require El Paso to maintain its accounts in such a way as to provide data in future rate cases to show the costs of Pacific's system as part of the merged company. We agree with this recommendation and will include such a condition in the present order. However, we shall amend the condition imposed by the presiding examiner so that El Paso will be required to account for and allocate not only direct costs, as required by the presiding examiner, but all costs as between the present El Paso and Pacific systems and as between three portions of Pacific's system. In this way the costs arising on the Pacific system will be readily identifiable by the parties and by us in a future rate proceeding, and the requirement will facilitate the allocation of system-wide costs and the designing of rates that will do justice to all customers. However, this requirement is without prejudice to the method of allocating costs or designing rates to be used in any future proceeding. We agree with the presiding examiner that it would be

improperly prejudging the evidence in such a proceeding if we acceded to P.G.&E.'s request that a condition be imposed that none of the costs associated with the present Pacific system be allocated to El Paso's present customers.

Other Matters

We agree with the presiding examiner that Pacific's application, under Section 7(b) of the Natural Gas Act, to abandon its facilities and services was inappropriate, for no abandonment is actually going to take place. We shall therefore dismiss Pacific's application, but its certificates will be rescinded and reissued to El Paso. We agree also that El Paso and Pacific should be required to take the appropriate steps under Delaware law to consummate the merger. By stipulation filed as Exhibit No. 380 in this proceeding it was agreed by El Paso that $4,702,856.37 represents profits of affiliated construction companies and that a condition might be imposed requiring El Paso to

establish a reserve of $10,000,000 to be available for adjustments to the accounts of Pacific upon the completion of the merger. Our staff is presently engaged in an examination of the accounts of Pacific. If as a result of this examination, adjustments to plant or depreciation reserve accounts are found to be appropriate and ordered by the Commission, we shall require as a condition of this order that adjustments in excess of the $10,000,000 shall be written off to earned surplus.

The Commission further finds:

(1) Pacific Northwest Pipeline Corporation, a Delaware Corporation with its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) El Paso Natural Gas Company, a Delaware Corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities hereinbefore described are proposed to be acquired and operated by El Paso for the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation of these facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas made from facilities to be acquired from Pacific, as more fully described in the applications and the evidence herein, will be made in interstate commerce, subject to the jurisdiction of the Commission and such sales are subject to the jurisdiction of the Commission and to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of this opinion and order and the conditions of the certificates issued hereunder, El Paso is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) The acquisition and continued operation of the facilities proposed to be acquired by El Paso from Pacific, and the sales of natural gas by it, subject to the jurisdiction of the Commission, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) The public convenience and necessity requires that the certificates issued herein shall be conditioned as provided below.

(8) Such contentions, objections and exceptions as are not specifically disposed of in the foregoing are without basis in law or support in fact.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing El Paso to acquire and operate all of the facilities of Pacific, subject to the jurisdiction of the Commission, which are described in the applications of these two natural-gas companies in Docket Nos. G-13018 and G-13019.

(B) All permits and certificates of public convenience and necessity heretofore issued to Pacific by the Commission are hereby rescinded as of the effective date of the merger herein authorized; and identical permits and certificates of public convenience and necessity to those so rescinded, with any amendments or modifications thereof made by the Commission, are hereby issued to El Paso, upon the terms and conditions of this order and subject to the pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, to be just as effective as if El Paso had originally been issued said certificates; and El Paso is hereby vested with all rights, and charged with all obligations and responsibilities of Pacific under the said rescinded certificates.

(C) The certificates, issued in paragraphs (A) and (B) above, shall be accepted in writing and under oath by a responsible official of El Paso within 30 days from the issuance of this order, pursuant to paragraph (A) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) The acquisition of Pacific's facilities by El Paso, as authorized in paragraph (A) hereof, shall be accomplished by El Paso by merging Pacific into it pursuant to the provisions of Section 253 of the Delaware General Corporation Law, by taking the legal steps proposed in El Paso's application and testimony, within 30 days from the issuance of this order.

(E) The certificates described in paragraphs (A) and (B) hereof are issued subject to the provisions of the stipulation entered into on September 9, 1958, by Attorneys representing El Paso and the Commission Staff, which is Exhibit No. 380 in this record, including the statement

that $4,702,856.37 represents profits of affiliated construction companies and the requirement that El Paso set up on its books and records and reflect in its financial statements, a reserve in the amount of $10,000,000 to be available for adjustments to the plant and depreciation reserve accounts of Pacific to be transferred to El Paso by Pacific upon acquisition of its facilities by merger.

(F) Any adjustments of El Paso's plant or depreciation reserve accounts applicable to the properties of Pacific in excess of the reserve of $10,000,000 referred to in (E) above shall be written off to earned surplus or such other disposition as the Commission may direct.

(G) Within 30 days from the issuance of this order, El Paso shall reissue, in its own name and without other change, all FPC Gas Tariffs of Pacific now on file with the Commission, but excluding agreements between Pacific and El Paso.

(H) The certificates described in paragraphs (A) and (B) hereof are issued upon the condition that El Paso shall maintain, in conformity with the Uniform System of Ac-

counts, supplemental accounts in scope and form, satisfactory to the Commission designed to show separately:

(a) The gas plant, depreciation reserve, operating revenues, operating expenses, depreciation, taxes, and return on investments which would be involved in any determination of El Paso's cost of service for the system zones formerly served by (i) El Paso, and (ii) Pacific and

(b) The gas plant, depreciation reserve, operating revenues, operating expenses, depreciation, taxes, and return on investments applicable to the main transmission line of the Pacific system divided as follows:

(i) From Sumas, Washington (on the Canadian boundary) to and including Station No. 14, near Pendleton, Oregon.

(ii) From Station No. 14, near Pendleton, Oregon, to Station No. 6, near Rock Springs, Wyoming.

(iii) From and including Station No. 6, near Rock Springs, Wyoming to the San Juan Basin.

(I) The certificates described in paragraphs (A) and (B) hereof are issued upon the further conditions that:

(a) Upon the consummation of the merger, El Paso shall establish and maintain a special reserve upon its books of account in such amount or amounts as shall equal the amount or amounts of all tax savings from deduction by the merged corporation of Pacific's past

losses, less the amount which could have been utilized by Pacific if there had been no merger;

(b) Credits to such reserve shall be made concurrently with the realization of the tax saving, and no

charges shall be made to that reserve without the authorization and approval of the Commission first having been obtained.

(c) Within 60 days of the issuance of this order, El Paso shall file a plan for disposition for the benefit of consumers of the amounts credited, or to be credited to the special reserve required in subparagraph (a) of this paragraph (I). All parties to this proceeding may file comments and views or alternative proposals with respect to such plan within 30 days after filing thereof.

(J) The application of Pacific to abandon its facilities under Section 7(b) of the Act is hereby dismissed for the reasons hereinbefore given; but Pacific is hereby authorized to do all things necessary to accomplish the merger herein authorized.

(K) Exceptions to the presiding examiner's decision, unless specifically granted by this order, are hereby denied.

(L) The decision of the presiding examiner is hereby adopted as the decision of this Commission except as modified by this order.

By the Commission.

J. H. GUTRIDE
Joseph H. Gutride,
Secretary.

(SEAL)

15038

[Cover omitted in printing]

15039

Docketed Jan. 4, 1960

Manual of Accounts Designed to Show Costs of Pacific's System Separately From the Over-All System of the Merged Company Necessary to Provide Data in Future Rate Cases to Show Separately the Cost of Service Assignable to Pacific's System

The accounts and accounting procedures proposed to be placed into effect as of January 1, 1960, are those shown in the accompanying Manual of Accounts, subject to such changes, if any, as may be required by the Commission. Additional accounts may be added from time to time as conditions require.

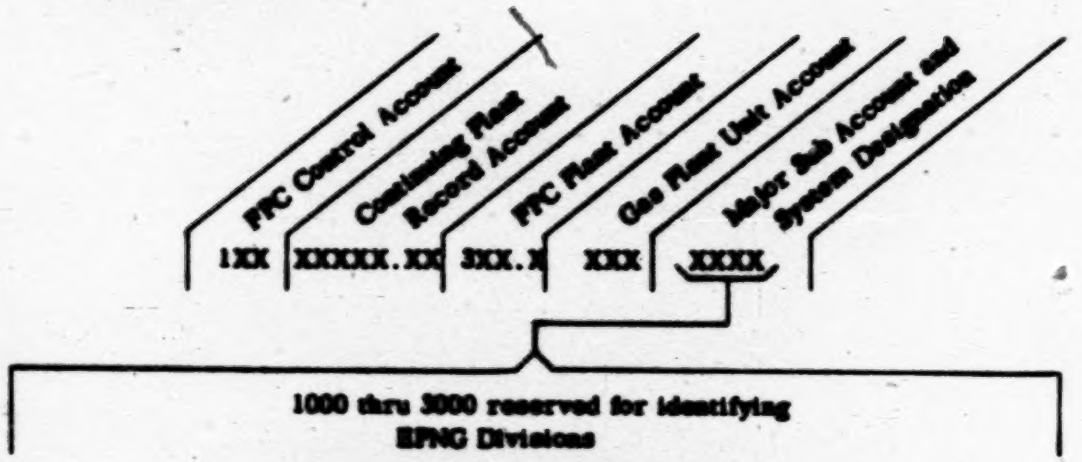
The FPC Codes and account titles are those which are currently prescribed in the Uniform System of Accounts, and such accounts will be used in the general and subsidiary ledgers and records maintained by the Company. The codes identified as "EPNG Code" represent the separate system of coding selected by the Company to be used in conjunction with the FPC Codes and are designed to facilitate the change-over to the proposed changes in the Uniform System of Accounts tentatively planned to be placed into effect on January 1, 1961. The EPNG Codes have been so designed at this time to eliminate the duplication in data processing operations which would otherwise be necessary if and when the proposed changes in the Uniform System of Accounts become effective. If the proposed changes in the Uniform System of Accounts do not become effective, the Company proposes to continue to use the same FPC accounts and account titles identified in this manual as "FPC Code".

Under the accounting procedures proposed to be followed on and after January 1, 1960, all direct costs applicable to Pacific's system will be currently coded in the supplemental accounts provided herein. All indirect and other costs which must necessarily be accounted for on allocation basis will be charged to the supplemental accounts identifying Pacific's system costs on an annual basis following the close of each calendar year, or such other times as may be required to make a determination of the cost of service for rate purposes. Indirect and all other costs will include general and administrative expenses, the costs of gas from a common production area (such as the San Juan Basin), taxes (including income taxes), and other costs which are determinable either on an annual basis or can be assigned to Pacific's system only on an allocated basis.

We presently propose to allocate such costs on the same basis that was used in FPC Docket No. G-4769, but such allocations should not prejudice our right to change the basis of allocation from time to time as the existing facts and conditions may require.

Balance Sheet Accounts - Assets and Other Debits

PPC CODE	EPNG CODE	ACCOUNT TITLE
100.1	101	Gas plant in service
100.1	102	Gas plant purchased or sold
100.6	103	Gas plant in process of reclassification
100.2	104	Gas plant leased to others
100.4	105	Gas plant held for future use
100.1	106	Completed construction not classified - Gas



The identifying code is further broken down as follows:

*4 - First digit identifies charges to common or indirect locations in the San Juan Basin.
X - Second digit is reserved for State identity.
X - Third digit is reserved for further detail.
X - Fourth digit is reserved for further detail.

**5 - First digit identifies the system formerly served by PNW except common or indirect locations.
X - Second digit is reserved for State identity.
X - Third digit is reserved for PPC Pacific System zone identity i.e., San Juan System, Rocky Mountain System, Northwest System.
X - Fourth digit is the final number separating each location.

(See Page 20 for basis of cost allocation)

(15042)

Balance Sheet Accounts - Assets and Other Debits

FPC CODE	EPNG CODE	ACCOUNT TITLE
100.3	107	Construction work in progress - Gas

Control Account	Work Order Number and Components	Gas Plant Unit	Work Order Sub Accounts	Major Sub Account and System Designation
107	XXXXX.XX	XXX	XXX-XX	XXXX

1314

See Page 1 for explanation of
"Major Sub Account and System Designation"

15042

Balance Sheet Accounts - Assets and Other Debits

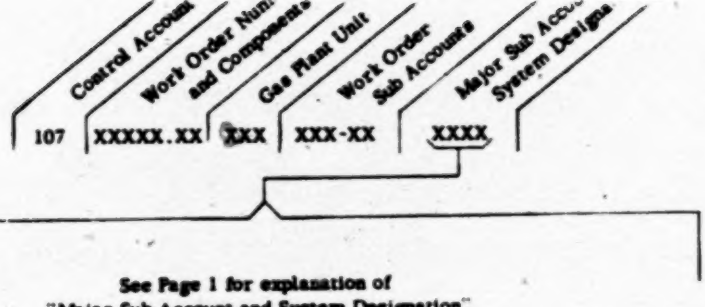
FPC CODE	EPNG CODE	ACCOUNT TITLE
250.11	108	Accumulated provision for depreciation of gas plant in service
250.12	109	Accumulated provision for depreciation of gas plant leased to others
250.13	110	Accumulated provision for depreciation of gas plant held for future use.
251.2	112	Accumulated provision for amortization and depletion of gas plant leased to others.
100.5	114	Gas plant acquisition adjustments.

1315

Control Account	Major Sub Account and System Designation
1XX	XXXX

FPC CODE	EPNG CODE	ACCOUNT TITLE
100.3	107	Construction work in progress - Gas

1314



See Page 1 for explanation of
"Major Sub Account and System Designation"

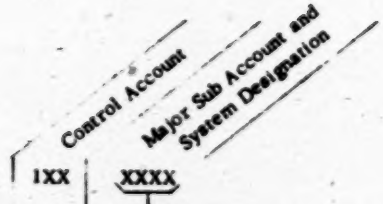
15042

Proposed Accounting Procedure
Docket G-13019

Balance Sheet Accounts - Assets and Other Debits

FPC CODE	EPNG CODE	ACCOUNT TITLE
250.11	108	Accumulated provision for depreciation of gas plant in service
250.12	109	Accumulated provision for depreciation of gas plant leased to others
250.13	110	Accumulated provision for depreciation of gas plant held for future use.
251.2	112	Accumulated provision for amortization and depletion of gas plant leased to others.
100.5	114	Gas plant acquisition adjustments.
252.	115	Accumulated provision for amortization of gas plant acquisition adjustments.
107.	116	Other gas plant adjustments
108.	118	Other utility plant
253.	119	Accumulated provision for depreciation and amortization of other utility plant.

1315



See Page 1 for explanation of
"Major Sub Account and System Designation"

(15049)

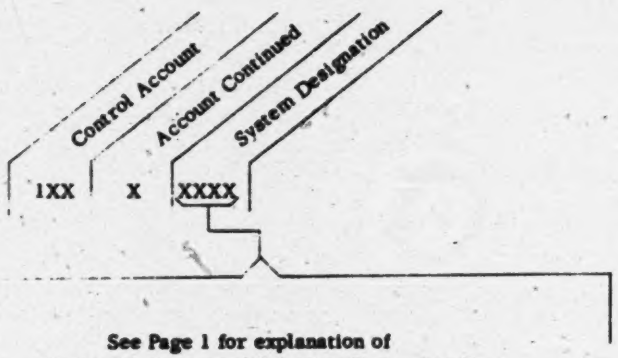
15043

Balance Sheet Accounts - Assets and Other Debits

(15044)

FPC CODE	EPNG CODE	ACCOUNT TITLE
250.2	111.1	Accumulated provision for amortization and depletion of producing natural gas lands and land rights.
250.2	111.2	Accumulated provision for amortization of underground storage land and land rights.
251.1	111.3	Accumulated provision for amortization of other gas plant in service.
250.3	113.1	Accumulated provision for abandonment of leases.
251.3	113.2	Accumulated provision for amortization of other gas plant held for future use.

1316



See Page 1 for explanation of
"Major Sub Account and System Designation"

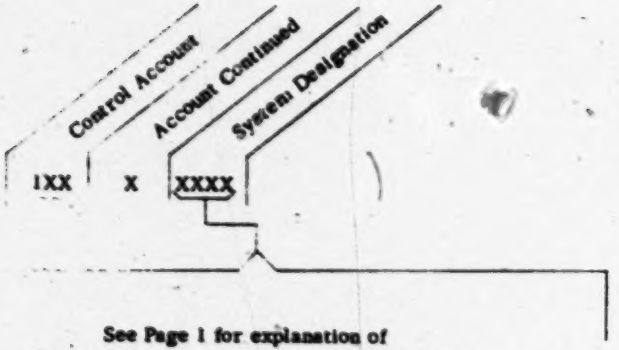
15044

Balance Sheet Accounts - Assets and Other Debits

FPC CODE	EPNG CODE	ACCOUNT TITLE
110.	121	Nonutility property
253.	122	Accumulated provision for depreciation and amortization of nonutility property.

1317

FPC CODE	EPNG CODE	ACCOUNT TITLE
250.2	111.1	Accumulated provision for amortization and depletion of producing natural gas lands and land rights.
250.2	111.2	Accumulated provision for amortization of underground storage land and land rights.
251.1	111.3	Accumulated provision for amortization of other gas plant in service.
250.3	113.1	Accumulated provision for abandonment of leases.
251.3	113.2	Accumulated provision for amortization of other gas plant held for future use.



See Page 1 for explanation of "Major Sub Account and System Designation"

Balance Sheet Accounts - Assets and Other Debits

FPC CODE	EPNG CODE	ACCOUNT TITLE
110.	121	Nonutility property
253.	122	Accumulated provision for depreciation and amortization of nonutility property.

1317

See Page 1 for explanation of
"Major Sub Account and System Designation"

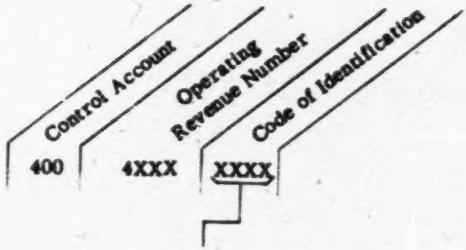
15045

(15045)

FPC Control Account 501 - Operating Revenues
EPNG Control Account 400 - Operating Revenue Accounts

FPC-CODE	EPNG CODE	ACCOUNT TITLE
600.	4800	Residential sales
602.2	4810	Commercial and industrial sales.
604.	4820	Other sales to public authorities
605.	4830	Sales for resale.
605.	4840	Interdepartmental sales.

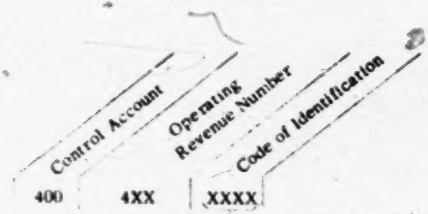
=



1316

FPC Control Account 501 - Operating Revenues
EPNG Control Account 400 - Operating Revenue Accounts

FPC CODE	EPNG CODE	ACCOUNT TITLE
612.	4870	Forfeited discounts
619.	4880	Miscellaneous service revenues
615.	4890	Revenues from transportation of gas of others
616.1	4901	Sales of products extracted from natural gas - gasoline
616.2	4902	Sales of products extracted from natural gas - butane
616.3	4903	Sales of products extracted from natural gas - propane
616.4	4909	Sales of products extracted from natural gas - other
618.1	4921	Incidental gasoline and oil sales - gasoline
618.2	4922	Incidental gasoline and oil sales - oil.
610.	4930	Rent from gas property
611.	4940	Interdepartmental rents
619.	4950	Other gas revenues



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X - Fourth digit is reserved for further detail.

**5 - First digit identifies the system formerly served by PNW except common or indirect locations.
X - Second digit is reserved for State identity.
X - Third digit is reserved for FPC Pacific System zone identity i.e., San Juan System, Rocky Mountain System, Northwest System.
X - Fourth digit is the final number separating each location.

(See Page 20 for basis of cost allocation)

(15049)

(15046)

1318

		natural gas - gasoline
615.2	4902	Sales of products extracted from natural gas - butane
616.3	4903	Sales of products extracted from natural gas - propane
616.4	4909	Sales of products extracted from natural gas - other
618.1	4921	Incidental gasoline and oil sales - gasoline
618.2	4922	Incidental gasoline and oil sales - oil
610.	4930	Rent from gas property
611.	4940	Interdepartmental rents
619.	4950	Other gas revenues

1318

1000 thru 3000 reserved for identifying EPNG Divisions
*4000 Common or Indirect Locations
**5000 reserved for identifying the PNW Division

The identifying code is further broken down as follows

*4 - First digit identifies charges to common or indirect locations in the San Juan Basin.
X - Second digit is reserved for State identity.
X - Third digit is reserved for further detail.
X - Fourth digit is reserved for further detail.

(See Page 20 for basis of cost allocation)

**5 - First digit identifies the system formerly served by PNW except common or indirect locations.
X - Second digit is reserved for State identity.
X - Third digit is reserved for FPC Pacific System zone identity, i.e., San Juan System, Rocky Mountain System, Northwest System.
X - Fourth digit is the final number separating each location

15049

Proposed Accounting Procedure
Docket G-13019

FPC Control Account 501 - Operating Revenues
EPNG Control Account 400 - Operating Revenue Accounts

FPC CODE	EPNG CODE	ACCOUNT TITLE
600.	4800	Residential sales
602.2	4810	Commercial and industrial sales.
604.	4820	Other sales to public authorities
605.	4830	Sales for resale.
605.	4840	Interdepartmental sales.

1319

See Page 6 for explanation of "Code of Identification"

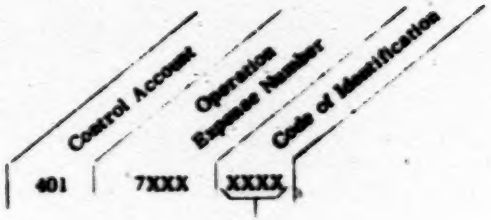
15047

(1/69)

FPC Control Account 502 - Operating Expenses
EPNG Control Account 401 - Operation Expense for Natural Gas Production and Gathering

FPC CODE	EPNG CODE	ACCOUNT TITLE
733.1	7500	Operation supervision and engineering
733.4	7510	Production maps and records
733.21	7520	Gas wells expenses - labor
733.31	7525	Gas wells expenses - expenses
735.4	7526	Gas wells expenses - joint credit
733.22	7530	Field lines expenses - labor
733.32	7535	Field lines expenses - expenses
733.23	7540	Field compressor station expenses - labor
733.33	7545	Field compressor station expenses - expenses
733.33	7550	Field compressor station fuel and power
733.34	7560	Field measuring and regulation station expenses - labor
733.34	7565	Field measuring and regulation station expenses - expenses
733.25	7570	Purification expenses - labor
733.35	7575	Purification expenses - expenses
735.1	7580	Gas well royalties
733.26	7590	Other expenses - labor
733.36	7595	Other expenses - expenses
735.2	7600	Rents

1320



See Page 6 for explanation of "Code of Identification"

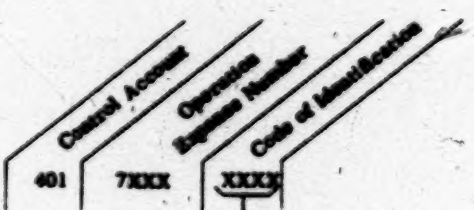
15048

(15048)

FPC Control Account 502 - Operation Expenses
EPNG Control Account 401 - Operation Expense for Products Extraction

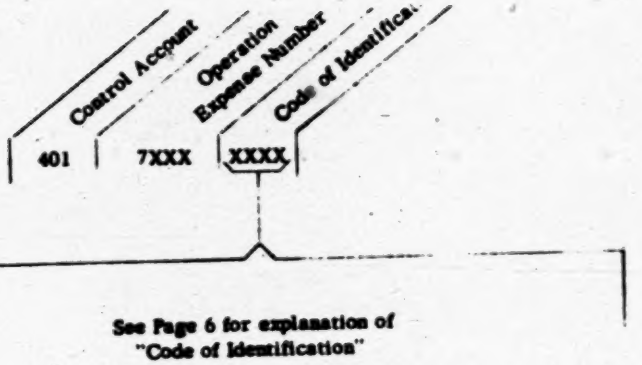
FPC CODE	EPNG CODE	ACCOUNT TITLE
736.1	7700	Operation supervision and engineering
736.2	7710	Operation labor
736.3	7720	Gas shrinkage
736.7	7730	Fuel
736.5	7740	Power
736.6	7750	Materials
736.7	7760	Operation supplies and expenses
733.35	7770	Gas processed by others
738.3	7780	Royalties on products extracted

1321



733.1	7500	Operation supervision and engineering
733.4	7510	Production maps and records
733.21	7520	Gas wells expenses - labor
733.31	7525	Gas wells expenses - expenses
735.4	7526	Gas wells expenses - joint credit
733.22	7530	Field lines expenses - labor
733.32	7535	Field lines expenses - expenses
733.23	7540	Field compressor station expenses - labor
733.33	7545	Field compressor station expenses - expenses
733.33	7550	Field compressor station fuel and power
733.24	7560	Field measuring and regulation station expenses - labor
733.34	7565	Field measuring and regulation station expenses - expenses
733.25	7570	Purification expenses - labor
733.35	7575	Purification expenses - expenses
735.1	7580	Gas well royalties
733.26	7590	Other expenses - labor
733.36	7595	Other expenses - expenses
735.2	7600	Rents

1320

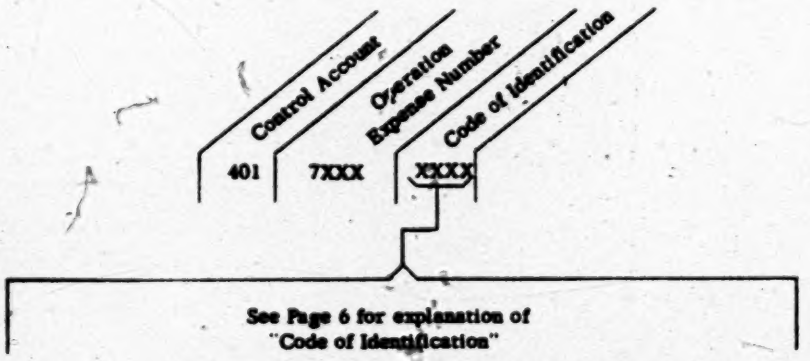


15048

FPC Control Account 502 - Operation Expenses
EPNG Control Account 401 - Operation Expense for Products Extraction

FPC CODE	EPNG CODE	ACCOUNT TITLE
736.1	7700	Operation supervision and engineering
736.2	7710	Operation labor
736.3	7720	Gas shrinkage
736.7	7730	Fuel
736.5	7740	Power
736.6	7750	Materials
736.7	7760	Operation supplies and expenses
733.35	7770	Gas processed by others
738.3	7780	Royalties on products extracted
738.4	7790	Marketing expenses
738.5	7796	Marketing expenses - tank car rent
738.7	7797	Marketing expenses - joint debit
738.8	7798	Marketing expenses - joint credit
738.1	7800	Products purchases for resale
738.2	7810	Variation in products inventory.
738.6	7820	Extracted products used by the utility - credit
738.5	7830	Rents

1321



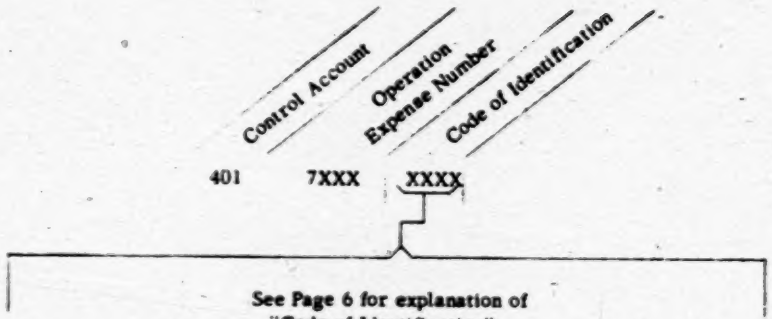
15049

(15049)

FPC Control Account 502 - Operation Expenses
EPNG Control Account 401 - Operation Expense for Exploration and Development Expenses

FPC CODE	EPNG CODE	ACCOUNT TITLE
739.1	7950	Delay rentals
739.2	7960	Nonproductive well drilling
739.3	7970	Abandoned leases
739.4	7980	Other exploration

1322



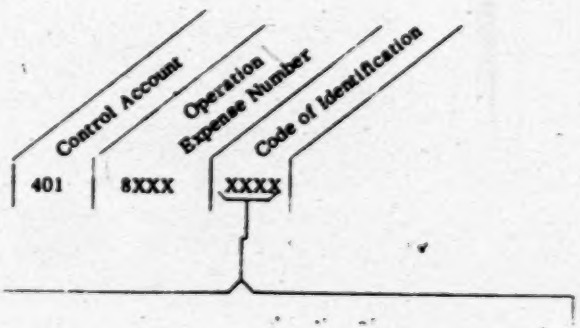
(15050)

15050

FPC Control Account 502 - Operating Expense
EPNG Control Account 401 - Operation Expense for Other Gas Supply Expenses

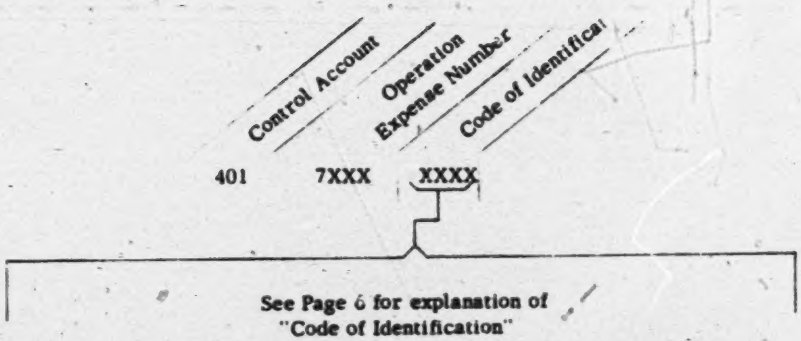
FPC CODE	EPNG CODE	ACCOUNT TITLE
745.11	8000	Natural gas well head purchases
745.12	8020	Natural gas gasoline plant outlet purchases
745.13	8030	Natural gas transmission line purchases
745.14	8040	Natural gas city gate purchases
745.2	8050	Other gas purchases
745.11	8060	Exchange gas
746.3	8073	Purchased gas calculations expenses
746.4	8074	Other purchased gas expenses

1323



CODE	CODE	ACCOUNT TITLE
739.1	7950	Delay rentals
739.2	7960	Nonproductive well drilling
739.3	7970	Abandoned leases
739.4	7980	Other exploration

1322



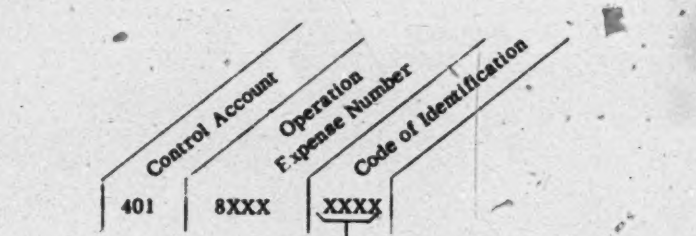
See Page 6 for explanation of "Code of Identification"

15050

FPC Control Account 502 - Operating Expense
EPNG Control Account 401 - Operation Expense for Other Gas Supply Expenses

FPC CODE	EPNG CODE	ACCOUNT TITLE
745.11	8000	Natural gas well head purchases
745.12	8020	Natural gas gasoline plant outlet purchases
745.13	8030	Natural gas transmission line purchases
745.14	8040	Natural gas city gate purchases
745.2	8050	Other gas purchases
745.11	8060	Exchange gas
746.3	8073	Purchased gas calculations expenses
746.4	8074	Other purchased gas expenses
747.1	8080	Gas withdrawn from underground storage - debit
747.2	8090	Gas delivered to underground storage - credit
748.1	8100	Gas used for compressor station fuel - credit
748.2	8110	Gas used for products extraction - credit
748.3	8120	Gas used for other utility operations - credit
749.	8130	Other gas supply expenses

1323



See Page 6 for explanation of "Code of Identification"

(15051) 15051

FPC Control Account 502 - Operating Expenses
EPNG Control Account 401 - Operation Expense for Transmission Expenses

FPC CODE	EPNG CODE	ACCOUNT TITLE
759.1	8500	Operation supervision and engineering
764.1	8501	Operation supervision and engineering - measurement
759.4	8503	Operation supervision and engineering - maps & records
759.21	8510	System control and load dispatching - labor
759.31	8515	System control and load dispatching - expenses
759.24	8520	Communication system expenses - labor
759.34	8525	Communication system expenses - expenses
759.22	8530	Compressor station labor and expenses - labor
759.32	8535	Compressor station labor and expenses - expenses
759.32	8540	Gas for compressor station fuel
759.32	8550	Other fuel and power for compressor stations
759.21	8560	Mains expenses - labor
759.31	8565	Mains expenses - expenses
764.20	8570	Measuring and regulating station expenses - labor
764.30	8575	Measuring and regulating station expenses - expenses
761.20	8580	Transmission and compression of gas by others
759.24	8590	Other expenses - labor
759.34	8595	Other expenses - expenses
761.1	8600	Rents

Control Account	Operation Expense Number	Code of Identification
401	8XXX	XXX

See Page 6 for explanation of Code of Identification

1324

(150520)

15052

FPC Control Account 502 - Operating Expense
EPNG Control Account 402 - Maintenance Expense for Natural Gas Production and Gathering

FPC CODE	EPNG CODE	ACCOUNT TITLE
734.1	7610	Maintenance supervision and engineering
734.22	7621	Maintenance of structures and improvements - Compressor
734.24	7623	Maintenance of structures and improvements - Other
734.3	7630	Maintenance of producing gas

Control Account	Maintenance Expense Number	Code of Identification

1325

		engineering - measurement
759.4	8503	Operation supervision and engineering - maps & records
759.21	8510	System control and load dispatching - labor
759.31	8515	System control and load dispatching - expenses
759.24	8520	Communication system expenses - labor
759.34	8525	Communication system expenses - expenses
759.22	8530	Compressor station labor and expenses - labor
759.32	8535	Compressor station labor and expenses - expenses
759.32	8540	Gas for compressor station fuel
759.32	8550	Other fuel and power for compressor stations
759.21	8560	Mains expenses - labor
759.31	8565	Mains expenses - expenses
764.20	8570	Measuring and regulating station expenses - labor
764.30	8575	Measuring and regulating station expenses - expenses
761.20	8580	Transmission and compression of gas by others
759.24	8590	Other expenses - labor
759.34	8595	Other expenses - expenses
761.1	8600	Rents

1384

Control Account	Operation Expense Number	Code of Identification
401	8XXX	XXX3

See Page 6 for explanation of Code of Identification

15052

FPC Control Account 502 - Operating Expense
EPNG Control Account 402 - Maintenance Expense for Natural Gas Production and Gathering

FPC CODE	EPNG CODE	ACCOUNT TITLE
734.1	7610	Maintenance supervision and engineering
734.22	7621	Maintenance of structures and improvements - Compressor
734.24	7623	Maintenance of structures and improvements - Other
734.3	7630	Maintenance of producing gas wells.
734.41	7640	Maintenance of field lines
734.42	7650	Maintenance of field compressor station equipment
734.43	7660	Maintenance of field measuring and regulating station equipment
734.6	7670	Maintenance of purification equipment
734.5	7680	Maintenance of drilling and cleaning equipment
734.7	7690	Maintenance of other equipment

Control Account	Maintenance Expense Number	Code of Identification
401	7XXX	XXXX

See page 6 for explanation of "Code of Identification"

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(15053)

15053

FPC Control Account 502 - Operating Expenses
EPNG Control Account 402 - Maintenance Expense for Products Extraction

FPC CODE	EPNG CODE	ACCOUNT TITLE
737.1	7840	Maintenance supervision and engineering
737.2	7850	Maintenance of structures and improvements
737.3	7860	Maintenance of extraction and refining equipment
737.3	7870	Maintenance of pipe lines
737.3	7880	Maintenance of extracted products storage equipment
737.3	7890	Maintenance of compressor equipment
737.3	7900	Maintenance of gas measuring and regulating equipment
737.3	7910	Maintenance of other equipment

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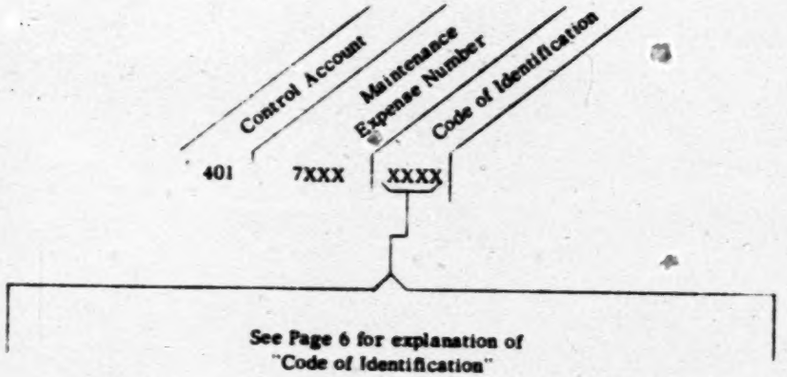


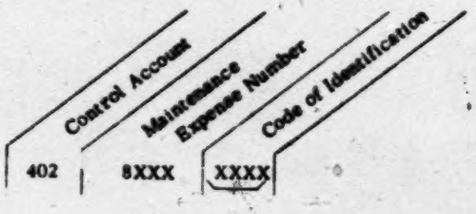
(15054)

15054

FPC Control Account 502 - Operating Expenses
EPNG Control Account 402 - Maintenance Expense for Transmission Expenses

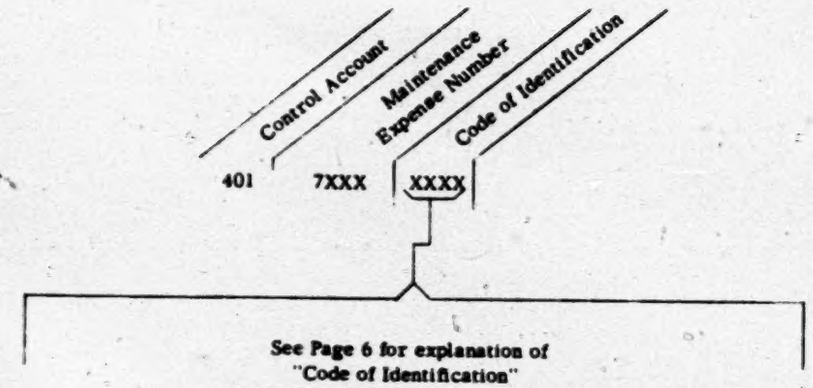
FPC CODE	EPNG CODE	ACCOUNT TITLE
760.1	8610	Maintenance supervision and engineering
760.21	8620	Maintenance structures and improvements - compressor
760.23	8622	Maintenance of structures and improvements - Main line
760.3	8630	Maintenance of mains

1327



FPC CODE	EPNG CODE	ACCOUNT TITLE
737.1	7840	Maintenance supervision and engineering
737.2	7850	Maintenance of structures and improvements
737.3	7860	Maintenance of extraction and refining equipment
737.3	7870	Maintenance of pipe lines
737.3	7880	Maintenance of extracted products storage equipment
737.3	7890	Maintenance of compressor equipment
737.3	7900	Maintenance of gas measuring and regulating equipment
737.3	7910	Maintenance of other equipment

1326



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FPC Control Account 502 - Operating Expenses
EPNG Control Account 402 - Maintenance Expense for Transmission Expenses

FPC CODE	EPNG CODE	ACCOUNT TITLE
760.1	8610	Maintenance supervision and engineering
760.21	8620	Maintenance structures and improvements - compressor
760.23	8622	Maintenance of structures and improvements - Main line
760.3	8630	Maintenance of mains
760.4	8640	Maintenance of compressor station equipment
764.6	8650	Maintenance of measuring and regulating station equipment
760.6	8660	Maintenance of communications equipment
760.6	8670	Maintenance of other equipment

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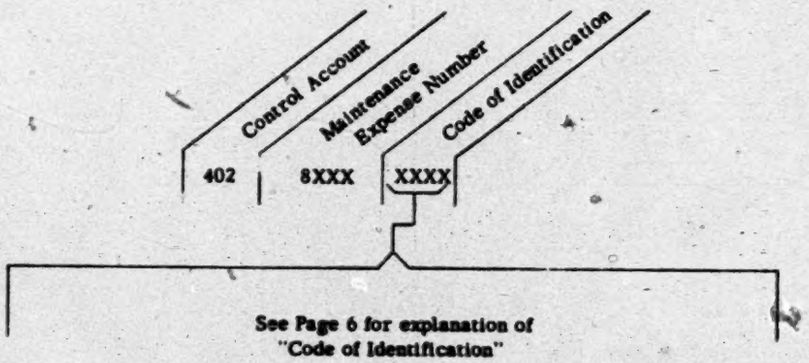

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FPC Control Account 502 - Operating Expenses
EPNG Control Account 401 - Operation Expense for Administrative and General Expenses
EPNG Control Account 402 - Maintenance Expense for Administrative and General Expenses

FPC CODE	EPNG CODE	ACCOUNT TITLE
790.	9200	Administrative and General salaries - executive
791.	9201	Administrative and General salaries - other
792.1	9215	Office supplies and expenses - executive expense accounts
792.2	9216	Office supplies and expenses - expense accounts
793.	9217	Office supplies and expenses - supplies
803.	9218	Office supplies and expenses - equipment rental
807.	922	Administrative and General expenses transferred - credit
794.	9235	Management and supervisor fees and expenses
795.	9236	Special services
796.	9237	Special legal services
798.	9240	Property Insurance
799.	9250	Injuries and damages
800.1	9260	Employees welfare expenses - other

Cont'd. on Page 17

Control Account	Operation or Maintenance Expense Number	Code of Identification
40X	9XXX	8XXX

8000 reserved for identifying Administrative and General expenses.

For a determination of charges in a cost of service study for rate making purposes these costs will be allocated between EPNG Division and PNW Division on the same basis used by the FPC staff in Docket G-4769, as follows:

(1) Labor -	Ratio of all labor charged to functional operating expense accounts
(2) Plant -	Ratio of plant investments in all accounts except general plants
(3) Operating Expense -	Ratio of functional operating expenses
Less:	Gas purchased
	Compressor station fuel
	Gas well royalties
	Royalty on products extracted
	Payment for products
	Gas lost in treating
	Gas shrinkage
	Abandoned leases
	Non-productive well drilling
	Trans. and Compr. by others

Cont'd. on Page 17

(150569)

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FPC Control Account 502 - Operating Expenses (Cont'd.)
EPNG Control Account 401 - Operation Expense for Administrative and General Expenses (Cont'd.)
EPNG Control Account 402 - Maintenance Expense for Administrative and General Expenses (Cont'd.)

FPC CODE	EPNG CODE	ACCOUNT TITLE
800.2	9266	Employees pensions and benefits
805.	9270	Franchise requirements
797.	9280	Regulatory commission [illegible]

Control Account	Operation or Maintenance Expense Number	Code of Identification

Administrative and General expenses applicable to the following departments or categories will be allocated as follows:

Executive	(1) Labor
Other Admin. & Gen'l.	(3) Expense
Accounting	(3) Expense
Property Valuation	(2) Plant
Internal Audit	(3) Expense
Personnel	(1) Labor
Purchasing	(2) Plant
Stationery & Printing	(1) Labor
Stenographic	(1) Labor
Research & Development	(1) Labor
Office Services	(1) Labor
Controller	[illegible]

1329

Proposed Accounting Procedure
Docket G-13019

FPC Control Account 502 - Operating Expenses (Cont'd.)
EPNG Control Account 401 - Operation Expense for Administrative and General Expenses (Cont'd.)
EPNG Control Account 402 - Maintenance Expense for Administrative and General Expenses (Cont'd.)

FPC CODE	EPNG CODE	ACCOUNT TITLE
800.2	9266	Employees pensions and benefits
805.	9270	Franchise requirements
797.	9280	Regulatory commission expenses
806.	9290	Duplicate charges - credit
801.	9300	Miscellaneous general expenses
803	9310	Rents

Control Account	Operation or Maintenance Expense Number	Code of Identification
40X	9XXX	8XXX

Administrative and General expenses applicable to the following departments or categories will be allocated as follows:

Executive	(1) Labor
Other Admin. & Gen'l.	(3) Expense
Accounting	(3) Expense
Property Valuation	(2) Plant
Internal Audit	(3) Expense
Personnel	(1) Labor
Purchasing	(2) Plant
Stationery & Printing	(1) Labor
Stenographic	(1) Labor
Research & Development	(1) Labor
Office Services	(1) Labor
Controller	(3) Expense
Medical	(1) Labor
Insurance	(2) Plant
Coffee Shop	(1) Labor
Data Processing	(3) Expense
Record Center, Syst. & Proc.	(3) Expense
Special Services	(3) Expense
Special Legal Service	(3) Expense
Regulatory Commission	(3) Expense
Insurance Premiums	(2) Plant
Injuries & Damages	(1) Labor
Employee's Welfare - Safety	(1) Labor
Group Insurance	(1) Labor
Employee's Welfare - other	(1) Labor
Pensions	(1) Labor
Fees of Trustee, Registrar, Transfer Agent, Stockholders Expenses	(2) Plant
Association Dues & Memberships	(3) Expense
Miscellaneous General Expense	(3) Expense
Hueco Club	(1) Labor

1329

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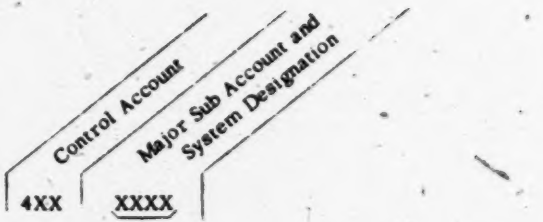
(150577)

(15058)

Control Account 4XX - Income Accounts for Utility Operating Income

FPC CODE	EPNG CODE	ACCOUNT TITLE
503.1	403	Depreciation expense
505.	406	Amortization of gas plant acquisition adjustments
507.	408	Taxes other than income taxes
508.1	412	Revenues from gas plant leased to others
508.2	413	Expenses of gas plant leased to others
509.	414	Other utility operating income
536.	432	Interest charged to construction - credit

1330

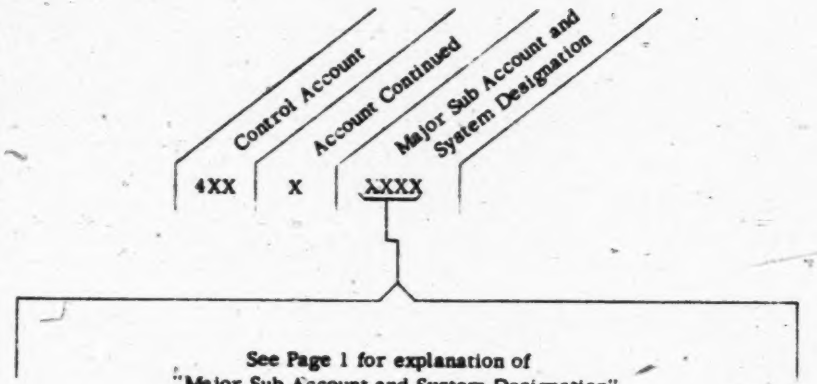


See Page 1 for explanation of
Major Sub Account and System Designation"

15058

Control Account 4XX - Income Accounts for Utility Operating Income

FPC CODE	EPNG CODE	ACCOUNT TITLE
503.2	404.1	Amortization and depletion of producing natural gas land and land rights
503.2	404.2	Amortization of underground storage land and land rights
504.	404.3	Amortization of other limited-term gas plant
506.	407.1	Amortization of property losses



See Page 1 for explanation of "Major Sub Account and System Designation"

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(15059) 15059

San Juan Basin Common System

4000	San Juan Division - General - Common System
4200	San Juan Division - Colorado - Common System
4218	Ignacio Plant
4500	San Juan Division - New Mexico - Common System
4510	Angel Peak Plant
4516	Ballard Plant
4522	Blanco Gasoline Plant
4525	Chaco Plant
4535	Kutz Plant
4538	Largo Field Plant
4543	Lindrith Plant
4547	San Juan River Plant
4581	San Juan Main Line District - Common System
4586	Wingate Fractionating Plant
4587	Wingate Liquid Products Line

Note: For rate making purposes, costs in the San Juan Basin identified as common or indirect will be allocated to the system formerly served by Pacific and the system served by El Paso on the basis of volumes of gas delivered to the respective systems.

PACIFIC DIVISION LOCATIONS

Production and Gathering System

5000	General
5100	Utah, Bar X Field
5200	Colorado, Garmesa Field
5200	Colorado, Piceance Creek Field
5300	Wyoming, Big Piney Field
5300	Wyoming, Belco Packaged Compressor Units

San Juan System

5020	General
5224	Main line district No. 2 - Colorado
5226	Main line district No. 3 - Colorado
5134	Moab compressor station (No. 2) - Utah
5137	Bar X compressor station (No. 26) - Utah
5235	Rangely compressor station (No. 4) - Colorado
5236	Piceance compressor station (No. 24) - Colorado
5237	Rangely field compressor station (No. 25) - Colorado
5336	Green River compressor station (No. 6) - Wyoming

Rocky Mountain System

5060 General

5347 Main line district No. 4 - Wyoming

5445 Main line district No. 5 - Idaho

5446 Main line district No. 6 - Idaho

5642 Main line district No. 7 - Oregon

5354 Kemmerer compressor station (No. 7) - Wyoming

5356 Big Piney compressor station (No. 23) - Wyoming

5357 Tip Top compressor station (No. 27) - Wyoming

5454 Soda Springs compressor station (No. 8) - Idaho

5455 Pocatello compressor station (No. 9) - Idaho

5451 Burley compressor station (No. 10) - Idaho

5452 Mountain Home compressor station (No. 11) - Idaho

5453 Caldwell compressor station (No. 12) - Idaho

5653 Baker compressor station (No. 13) - Oregon

Northwest System

5060 General

5763 Main line district No. 10 - Washington

5761 Main line district No. 11 - Washington

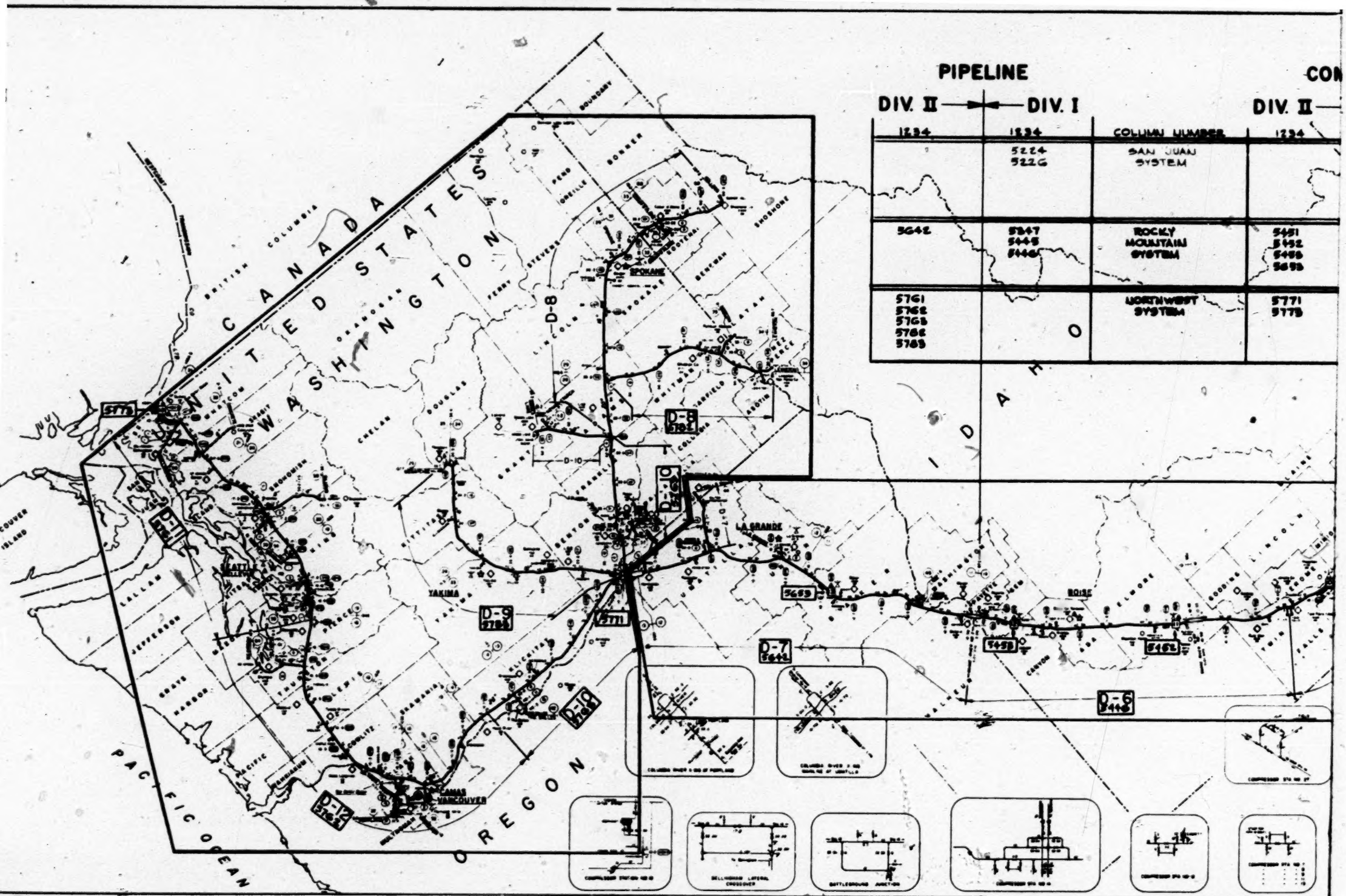
5762 Main line district No. 12 - Washington

5771 Plymouth compressor station (No. 14) - Washington

5773 Sumas compressor station (No. 18) - Washington

5782 Main line district No. 8 - Washington

5783 Main line district No. 9 - Washington


PIPELINE
DIV. II
DIV. I
DIV. II
1234
1234
COLUMN NUMBER
1234
5224
5226
SAN JUAN SYSTEM
5642
5647
5648
5646
ROCKY MOUNTAIN SYSTEM
5651
5652
5658
5659
5761
5762
5763
5764
5765
NORTHWEST SYSTEM
5771
5775
CANADA
UNITED STATES
WASHINGTON
IDAHO
OREGON
PACIFIC OCEAN
SPOKANE
LA GRANDE
BOISE
YAKIMA
CAMAS
VANCOUVER
D-8
5782
D-9
5784
D-10
D-11
5781
D-12
5783
D-7
5643
D-6
5648
5775
5771
5659
5658
5652

COLUMN CODE KEY

COLUMN

1. THE NUMBER SERVES PACIFIC DIV.
2. EACH SYSTEM HAS A DIFFERENT NUMBER.
3. THE FIVE NUMBERS ARE PIPELINES AND THE ODD NUMBERS ARE STATIONS
4. NUMBERS 456,748 ARE DIVISION I.
   NUMBERS 1,249 ARE DIVISION II.
   NUMBERS 049 ARE DIVISION III.

COMP. STA.

DIV. II — DIV. I

PIPELINE

DIV. III

GATH. SYS., SUPPLY LAT.S OTHER THAN SAN JUAN

PRODUCTION & GATHERING SYSTEM

4000 SAN JUAN BASIN FIELD
5100 BAR X FIELD
5200 CARUMBA FIELD
5300 PICEANCE CREEK FIELD
5500 BIG PINEY FIELD
5600 WYOMING, BELCO PACKAGED COMPRESSORS

ALL COSTS IN SAN JUAN BASIN TO BE IDENTIFIED WITH A 4000 SERIES CODE AS COMMON OR INDIRECT COSTS

SAN JUAN BASIN FIELD FARMINGTON CHACO

PACIFIC NORTHWEST PIPELINE CORP
SALT LAKE CITY UTAH
ENGINEERING DEPARTMENT

SYSTEM MAP FOR OPERATIONS

15065

Docketed Jan. 11, 1960

EL PASO NATURAL GAS COMPANY
EL PASO, TEXAS

January 10, 1960

Reply to:
P. O. Box 1526
Salt Lake City 10, Utah

Federal Power Commission
Washington 25, D. C.

Attention: Mr. J. H. Gutride, Secretary

Gentlemen:

On December 31, 1959, pursuant to the Order of the Federal Power Commission issued on December 23, 1959 in Docket Nos. G-13018 and G-13019, Pacific Northwest Pipeline Corporation was merged into El Paso Natural Gas Company pursuant to Section 253 of the General Corporate Law of the State of Delaware.

The said El Paso Natural Gas Company as of January 1, 1960, hereby adopts, ratifies and makes its own, in every respect, the applications for certificates of public convenience and necessity listed below which have heretofore been filed with the Federal Power Commission by the said Pacific Northwest Pipeline Corporation:

Docket No. G-16100	Docket No. G-16237
Docket No. G-16188	Docket No. G-17902
Docket No. G-16236	Docket No. G-18033

Docket No. G-19393

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

By R. W. HARRIS
Vice President

15066

Docketed Jan. 20, 1960

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matters of

Docket No. G-13018

PACIFIC NORTHWEST PIPELINE CORPORATION

Docket No. G-13019

EL PASO NATURAL GAS COMPANY

Petition for Rehearing

Introduction

Comes now the State of California (California), Intervenor herein, and an aggrieved party, and pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of this Commission's Rules of Practice and Procedure, applies for rehearing and stay of this Commission's Order Issuing Certificates of Public Convenience and Necessity Authorizing Merger with Conditions and Adopting with Modifications the Decision of the Presiding Examiner, issued December 23, 1959 in the above-captioned proceeding.

The following grounds for rehearing and specifications of error in the Order are made in support of this petition.

I.

The State of California requests rehearing in this proceeding, and states that the certificate authorized is contrary to the public convenience and necessity.

California states that the order of the Commission herein, insofar as it modifies and adopts the decision of the Presiding

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Examiner, is erroneous, incorrect as a matter of law, contrary to the Natural Gas Act, and constitutes an abuse of discretion. It is the position of the State of California that those reasons set forth by the Commission in support of the decision reached are not supported by proper or sufficient evidence. It is the position of the State of California that such findings as the Commission has made in support of its decision are incorrect as a matter of law and that the record is without any evidence, substantial or otherwise, from which this Commission could, as a matter of law, approve this merger. Applicants have not met the burden of proof posed by the standards of "public convenience and necessity" and by the concept of what is "just and reasonable."

It is not incumbent upon California to make out the benefits of merger. This duty still rests upon the applicants.

II.

The decision erroneously ignores questions of economic impact, possible effects upon rate structure, possible effects upon cost allocation.

These applications, approval of which was granted in the public interest, necessarily, under Section 7(c) of the Natural Gas Act, must comply with public convenience and necessity. The decision is in error in failing to consider the effect of the merger upon rates; it is in error in failing to appraise the merger in terms of its effect upon the allocation of costs of the Pacific Northwest system with reference to a merged corporation.

The instant decision states, at page 9 thereof, the

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following: "Thus any effect which the merger may have on rates is not before us at this time. It will necessarily have to be settled in another proceeding."

Having so neatly disposed of and deferred to the future the bothersome problem of economic impact, and having stated that the rate effect is not to be decided herein, we ask the Commission to grant rehearing, in order to reconcile the other inconsistent findings pertaining to rates. For example, at page 3 of the instant decision, the Commission finds: "All contracts for sales to the present customers of both companies would be performed by El Paso and existing rates would be unaffected by the merger transaction."

On page 7 of the decision is found this: ". . . that rate increases would have prevented development of Pacific's markets . . ."

On page 9 of the decision appears this finding: "The merger will result in savings that will tend to lower rates or prevent them rising more than they would otherwise."

As to the public concern about the method of allocating costs after merger, the Commission finds: "This issue of allocation, of course, is one for a rate proceeding. It is a matter for our judgment based upon all the facts before us concerning the operation of the merged system."

When the Commission discusses public interest, on page 5 of the decision, it finds that the merger will result in "lower rates."

California states that this failure to take evidence concerning the question of economic impact, which means no more than the question of cost allocation and rates, constitutes reversible error and grounds for rehearing.

The decision itself, having stated that the question of rates will not be here decided, cannot then go on to find "lower rates," that "existing rates would be unaffected," or that the merger "will tend to lower rates or prevent them from rising more than they would otherwise."

The record is absent of any evidence whatsoever as

to economic impact. It does not contain any evidence which can support such findings as these.

The attention of the Commission is directed to *Re Kansas Pipe Line & Gas Company*, 30 P.U.R. (N.S.) (1939), 321, at 345. The *Kansas Pipe Line* case, likewise, was a certificate proceeding under Section 7(c) of the Natural Gas Act; and it stands for the proposition, among other things, that in passing upon applications for certificates of public convenience and necessity the applicant must furnish evidence as to proposed rates, and the Commission is under a statutory duty to find based upon valid evidence with reference to them. See also, *Atlantic Refining Co., et al.* v. *Public Service Commission of the State of New York*, 360 U. S. 378 (1959).

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III.

In disposing of the antitrust issue, the Commission erred in taking official notice of competition.

In disposing of the antitrust problem, the Commission made reference to the certificate issued to Transwestern Pipeline Company and to the current uncompleted hearings relating to the application of the Pacific Gas Transmission Company. The decision herein erroneously took official notice of each of the other proceedings; further, and erroneously, it took official notice that each of the other proceedings was competitive in nature, so as to cure any violation of the Clayton Act.

The error committed herein can be chronologically set forth as follows:

Merger Application:

The instant case commenced with an application filed on August 7, 1957; the hearing opened on September 17, 1958 and concluded on January 6, 1959. No further testi-

mony or evidence was received, nor could it have been without reopening after January 6, 1959.

Transwestern Application:

The application was filed on April 15, 1958; hearings opened on December 15, 1958; fifteen days of hearing were had, in addition to others, from March 10 to April 2, 1959, at which time the matter was finally submitted; the decision was rendered on August 10, 1959.

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Pacific Gas Transmission:

The application was filed on December 29, 1958; hearings commenced on October 15, 1959 and have concluded; however, the State of Oregon has petitioned to reopen the proceeding for further testimony; briefs are presently being received, and the date of the decision is unknown.

We question whether it was proper in the first instance for the Commission to take official notice in the detail it did of two unrelated proceedings. Even assuming the Commission could take official notice of the applications in the other cases, it could not, from the applications or from anything else, lawfully take official notice that these other projects were competitive.

As the chronological narration set forth shows, the Transwestern case had fifteen days of hearings from March 10 to April 2, 1959, long after the merger hearings had concluded on January 6, 1959.

The Pacific Gas Transmission case and hearings therein did not commence until October, 1959, approximately nine months after the hearings had concluded in the merger case.

While reference was made in a most casual fashion to Transwestern and Pacific Gas Transmission in the merger case, no evidence whatsoever was offered upon the proposition that either or both would furnish such competition as would dispose of Section 7 of the Clayton Act.

It was error for the Commission to find as it did concerning the antitrust problem; the Commission denied California due process

and committed error under the Administrative Procedure Act. Section 7(d) of the Administrative Procedure Act states as follows: "Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary."

See, *Ohio Bell Telephone Company* v. *Public Utilities Commission of Ohio*, 301 U.S. 292; *Railroad Commission of California* v. *Pacific Gas & Electric Company*, 302 U. S. 388; *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, 294 U. S. 63.

As one of the grounds for rehearing, California states that the antitrust question was decided upon evidence not contained in the record; upon evidence purported to be supplied through the device of official notice, without proper or timely notice having been given to the intervenors and others to meet such evidence.

The decision erred in disposing of the antitrust issue when it adopted the reasoning of the examiner's report that an administrative agency can dispose of such an issue even as against later judicial determination.

IV.

The Commission approved the merger erroneously and in disregard of basic utility concepts.

As the record shows herein beyond contradiction, the applicant Pacific Northwest was experiencing financial difficulties. While such did not impair its function to serve,

none the less, its earnings were, and would be for the future, insufficient to reward stockholders. This Commission ignored all of the evidence in the record which shows quite clearly that the stock acquisition by El Paso Natural Gas Company served to enrich the original stockholders of Pacific Northwest Pipeline Corporation; and if Pacific were in such dire straits as applicants allege, this merger was the vehicle whereby the original investors in Pacific were saved from their own folly. We remind this Commission that it is basic regulatory law that the risk of investment is upon the stockholders. They are given only an *opportunity* to profit upon their investment. When they have guessed wrong, the risk is not to be shifted to the rate payers.

The public convenience and necessity does not require that the rate payers of the El Paso system, a financially healthy corporation, wed themselves to a financially weaker pipeline corporation. No matter what the arguments contrariwise, a sound corporation does not strengthen itself by merging with an unsound corporation. This is the effect of the merger, and it was error for the Commission to approve it in the light of the evidence in this regard.

V.

It was error to approve the merger upon the dubious theory that El Paso's markets needed Canadian gas.

The instant decision, in discussing the public interest—and we might point out that this Commission has been somewhat

less than infallible in judging that factor of late—justifies the merger and finds that it will improve El Paso's gas supply and utilization of gas reserves.

While, generally speaking, the entire pipeline industry is in need of additional gas supplies, there was not such a critical—or any—lack of gas supply as to impair the ability of El Paso to serve its existing customers. It was not suggested in the record that El Paso would fail to meet its commitments, now or in the future. Furthermore, we remind the Commission that in Opinion No. 333, issued on November 27, 1959, after hearings and after presumed thorough consideration of the matters before it, this Commission, totally independent of the merger case and totally independent of any Canadian gas reserves, found that El Paso had an adequate gas supply to meet its requirements.

Fundamentally, this Commission committed error, even conceding a need for additional gas supply, by attempting to cure such alleged deficiency by granting the merger applications.

If El Paso's need for gas supply must be met from Canada, the record herein shows without contradiction that, through the device of contract, such gas is easily available.

The Commission committed error in justifying the merger, based upon findings that El Paso will have additional Canadian gas. The record does not so indicate.

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VI.

The Commission erroneously found improved utilization of gas supplies for "flexibility".

The merger does not furnish improved utilization of gas reserves, nor does it furnish flexibility of operation. The Commission committed error in finding that such would result from the merger.

The merger does not change pipeline capacity, pipeline location, or market areas. The two systems are separate

and distinct, and the merger cannot change that. The testimony is uncontradicted in this regard, and the Commission erroneously found improved gas supply and utilization. There is no evidence to support such findings or conclusions.

VII.

The Commission erred in failing to give proper consideration to the record before it.

California wishes to point out that, consistently throughout this case and now, it is in opposition to this merger, based upon a proper concept of public convenience and necessity, for all of the areas, parties, rate payers, and others affected by the merger. It is concerned with this matter not because of reasons peculiar to California alone but because of public convenience and necessity as it has been frustrated on a Western-wide basis by the decision of the Commission.

California requests that the Commission grant a stay of the decision herein. We point out that by telegram dated

December 16, 1959, addressed to the Federal Power Commission and to each of the Commissioners thereof, a stay was at that time requested, in these words: "Request that any decision rendered by Commission be stayed for a period of ten days after date of issuance to preserve effective appeal."

This matter was argued on December 10, 1959, and at that time counsel for El Paso Natural Gas Company requested that this matter be decided within a week. This desire to rush headlong to a decision in a matter so grave as this has been met in part, at least, by this Commission, which decided this matter in a mere thirteen days from the date of oral argument and submission. We point out

to this Commission that it was not nearly so quick to protect the public interest in rate proceedings affecting California. Specific reference is made to Docket G-4769, filed in 1954 and not decided until 1959. Reference is also made to Dockets G-16928 and G-17929, both vitally affecting California rate payers, neither even set for hearing.

California asks equal time and consideration of the grave issues posed by the instant case. Failure to give such equal treatment is inconsistent with other Commission action in similar matters.

California states that the Commission should grant rehearing in this case, to give mature, deliberate, and careful consideration to the public interest involved as due process requires.

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VIII.

Other Errors and Grounds for Rehearing.

1. The applicants here, who were required to justify this merger in terms of public convenience and necessity, have failed to meet the burden of proof.

2. The decision is unsupported by any evidence justifying the merger.

3. The merger weakened the financial position of El Paso and is contrary to the public convenience and necessity.

4. Neither the public convenience nor necessity required any of the alleged benefits of merger, since all benefits were already in being and could be expanded, if necessary, through the device of further contract operations between a parent corporation and a wholly owned subsidiary.

5. There is no evidence that merger was indispensable to sustain the financial position of the Pacific Northwest

Pipeline Corporation. All of the testimony of the officers of both corporations shows without contradiction that in time Pacific would have become a sound and solvent pipeline corporation.

6. In failing to impose protective conditions, as requested by the Pacific Gas and Electric Company, the Commission, as in the Catco case,[1] failed to protect the public interest and committed error. The merger was not sought to meet the public convenience

15078

and necessity but, as the evidence shows, to frustrate action of the Department of Justice of the United States of America under Section 7 of the Clayton Act.

7. The decision contains easily stated conclusions and generalities relating to the public interest, flexibility, rates, antitrust questions, all of which are offered unsupported by sufficient evidence and under no standard or norm for a case such as this.

8. The hearings in this matter were of some length, and the issues posed most complex. With reference to the size of the record before it, the Commission was quick and hasty to arrive at a decision; and as grounds for error and rehearing California states that the Commission did not fully and fairly consider the record, and we ask that the Commission grant rehearing so that it may give attention and proper consideration to such record. We point out to the Commission that its own staff was strong in opposition to the merger, as was the State of California. California states that all of the reasons in opposition to the merger were not fully considered by the Commission, nor was the record herein.

[1] *Atlantic Refining Co., et al. v. Public Service Commission of the State of New York*, 360 U.S. 378 (1959).

9. The tax savings referred to in the decision are not a continuing saving and are not sufficient in themselves or, with other factors herein, a proper basis for approving this merger.

10. The "savings" referred to in the decision are illusory and non-existent. There is no evidence whatsoever showing any "savings."

15079

Conclusion

For all of the reasons herein stated, California asks that rehearing be granted and the decision be stayed.

Respectfully submitted,

/s/William M. Bennett
William M. Bennett
Special Counsel for the State of California; Chief Counsel for the California Public Utilities Commission

15080

Received Feb. 1, 1960

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matters of

Docket No. G-13018

PACIFIC NORTHWEST PIPELINE CORPORATION

Docket No. G-13019

EL PASO NATURAL GAS COMPANY

Verification of Petition for Rehearing

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.

Comes now WILLIAM M. BENNETT, the undersigned, being first duly sworn, and states that he is Special Counsel for the State of California and Chief Counsel for the California Public Utilities Commission; that he personally prepared and directed the filing with the Federal Power Commission of a Petition for Rehearing in the above-entitled proceeding; that the undersigned has read said Petition and that all of the statements contained therein are true and correct, to the best of his knowledge and belief.

WILLIAM M. BENNETT
William M. Bennett

Subscribed and sworn to before me
this 29th day of January, 1960.

MIRIAM M. JOHNSON
Notary Public in and for the
City and County of San Francisco,
State of California.

My Commission Expires March 31, 1963

(SEAL)

15081-15085

[Certificate of Service omitted in printing]

15086

Docketed Feb. 17, 1960

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman: Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

Docket No. G-13018

PACIFIC NORTHWEST PIPELINE CORPORATION

Docket No. G-13019

EL PASO NATURAL GAS COMPANY

Order Denying Petition for Rehearing and Stay

(Issued February 17, 1960)

By petition filed January 20, 1960, the State of California pursuant to Section 19(a) of the Natural Gas Act has applied for rehearing and stay of the Commission's order issued December 23, 1959, authorizing the merger of Pacific Northwest with El Paso Natural Gas Company. For the reasons set forth below we are denying the petition for rehearing and stay.

California contends that the decision ignores questions of the economic impact of the merger by which it means "no more than the question of cost allocation and rates." It says the decision is in error in failing to appraise the merger in terms of its effect upon the allocation of costs of the Pacific Northwest System with reference to the merged corporation. What California fears, of course, is that the supposed higher costs of the Pacific Northwest

(15086)

System will be shifted so as to result in higher rates to El Paso's California customers.

Contrary to California's contentions we did not ignore the matter of allocations and rates. We noted certain savings that would tend to lower rates, but we concluded, as did the presiding examiner, that the question of the rates to be charged by the merged company was not before us. We were not presented with an initial rate or a changed rate, for El Paso stated that it did not propose to make any change in its own tariff or rates, except rate schedules which apply to sales or exchanges between El Paso and Pacific, for such rate schedules will not be needed after the merger. The legal transaction by which the assets of the two corporations come to be held by one corporation would not, of course, in itself shift costs or raise rates. The problem before us was thus different from that presented by the *CATCO* case[1] cited by California. There as in many certificate cases, an initial price for a new supply of gas was submitted to us and the Court laid down certain rules as to how this initial price should be appraised in the light of the public convenience and necessity.

15087

We understood, as can be seen from our prior order, that El Paso's operations would be changed as a result of the merger. In fact, we approved the merger because, among other advantages, we believed that it would make available to El Paso additional supplies of gas and increased flexibility of operations. These are physical results that are not part of the merger transaction itself, although the merger would encourage and assist in bringing them about. Approval of the merger transaction was justified because of the advantages which would flow from it, so

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[1] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378.

that it was not necessary to determine the allocation of costs on the combined system at the time of approving the merger.

Although not a direct result of the merger transaction, shifts in cost or changes in rates might or might not come about as a result of the physical changes. However, the exact effect of the changed operations on allocation of costs to the several customers of the combined system has not been shown nor could it be shown at this time. That question will be considered if it comes before us, for example, upon the filing of new rates by El Paso. We shall then necessarily have to make an allocation, and we shall do so in a manner to distribute fairly the costs of the combined system. We may say further that in making such an allocation we will not be bound rigidly by a preconceived method. That is we shall not uncritically permit costs to follow methods of operation that we believe would unfairly and unnecessarily shift costs from one group of customers to another.

To assist us in any future proceedings and as a result of requests made by El Paso's California customers, we provided in our order that El Paso should maintain supplemental accounts designed to show the costs separately for various segments of the Pacific Northwest System and separately for the former El Paso System and the former Pacific Northwest System. In this way all parties to the proceeding and this Commission would have more easily available some of the necessary data on which to base a just allocation of costs and rate determination.

California further contends that in disposing of the antitrust issue the Commission improperly took official notice of other proceedings and official notice that the other proceedings were competitive with respect to sales of gas in California so as to cure any violation of the Clayton Act resulting from the merger. These other proceedings

relate to the applications of Transwestern Pipeline Company to which we granted a certificate on August 10, 1959, 22 FPC 391, and Pacific Gas Transmission Company in Docket No. G-17350.[2]

15088

In the first place California is not correct in asserting that it was necessary for us to take official notice of these proceedings. The Transwestern and Pacific Gas Transmission applications were described at some length in the testimony and other evidence in the present proceeding. For instance, Exhibit 1, which is a relief map of the western part of the United States shows Transwestern's proposed pipeline extending from the Permian Basin parallel to the route followed by El Paso's pipeline to Topock, Arizona, on the California border where delivery is to be made by both pipelines to the Calfornia customers. The same exhibit shows the proposed pipeline of Pacific Gas Transmission extending from Kingsgate on the Canadian border to Klamath Falls on the California border where connection is made with proposed facilities of Pacific Gas and Electric Company extending, as the map shows, to the San Francisco area. In view of these proposals discussed and set forth in the evidence there was ample support for our finding with respect to competition for the California market. These proposals show that there was an intention to compete for the California market even without any possible competition on the part of Pacific Northwest.

We did take official notice of our own order granting a certificate to Transwestern. We were, of course, privileged to do this, and no objection was made or could be made

[2] It should be noted that with respect to this contention California is under a fatal procedural disability. It did not raise the point in its exceptions to the decision of the presiding examiner who also discussed the same proceedings, so that under our Rules, Section 1.31(c), it was precluded from raising the point in its petition for rehearing *State of Wisconsin* v. *F.P.C.*, 201 F. 2d 183 (CADC), certiorari denied 345 U.S. 934.

that this was not a true fact. As has been said, "due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties." *Market Street R. Co.* v. *Comm'n.*, 324 U.S. 548, 562.

Having shown that there was an intent to compete for the California gas market we have satisfied the requirement that we consider the national policy against monopoly before granting a certificate of public convenience and necessity. *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (CADC). We were not authorized to determine whether the transaction violated the Clayton Act or any other anti-trust laws.

California further contends that we failed to give proper consideration to the record before us in this proceeding. We need only point out that this proceeding included all of the normal steps in administrative proceedings before us. There were 23 days of hearing in which counsel for California actively participated; briefs were filed; the intermediate decision procedure was not waived as in some cases where there is an alleged need to save time, and the presiding examiner issued a decision of 62 pages on November 20, 1959. After the filing of exceptions and oral argument on December 10, 1959, in which counsel for California participated, we issued our order on December 23, 1959, adopting the presiding examiner's decision with modifications. In our opinion thirteen days was sufficient time for us to reach a decision after final submittal. In the *Houston Texas* case[3] it was necessary to issue our decision before the end of the year and we did so seven days after oral argument upon a much longer record than in this proceeding. On review the court said:[4]

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[3] *Houston Texas Gas & Oil Corporation*, 16 FPC 118.

[4] *Florida Economic Advisory Council* v. *F.P.C.*, 251 F. 2d 643 (CADC), certiorari denied, 356 U.S. 959.

"It is not for the courts, short of flagrant extremes, to tell the administrative agencies how long they must ponder before coming to a decision."

In the present case we issued our decision promptly because it was alleged that if the merger took place before the end of the year taxes would be saved. Furthermore, we were impressed with the benefits to be derived from the merger and were of the opinion that unnecessary delay in the issuance of our decision would not be justified. Because of these same considerations we did not grant the stay requested by California's telegram of December 16, 1956, nor will we grant the stay requested by it in connection with its petition for rehearing.

The Commission finds:

The assignments of error and grounds for rehearing in the above application for rehearing set forth no new facts or principles of law which were not fully considered by the Commission when it issued its order December 23, 1959, or which having now been considered warrant any change or modification of said order. Such specifications of error, contentions and arguments contained in the above application for rehearing as are not specifically disposed of in the foregoing are without reasonable basis in law, or are immaterial to the correct decision of this case, and should be denied.

The Commission orders:

The above application for rehearing and stay is hereby denied.

By the Commission.

J. H. GUTRIDE
Joseph H. Gutride,
Secretary.

(SEAL)

18090

Received Feb. 23, 1960

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matters of

Docket No. G-13018

PACIFIC NORTHWEST PIPELINE CORPORATION

Docket No. G-13019

EL PASO NATURAL GAS COMPANY

Motion for Extension of 60 Days Time in Which to File Plan Pursuant to Paragraph I(c) of Order of December 23, 1959

Comes now El Paso Natural Gas Company and moves the Commission to accord to it an additional period of 60 days in which to comply with provisions of Paragraph I(c) of order of December 23, 1959 entered in the above dockets, requiring El Paso to file a plan for disposition for the benefit of consumers of the amounts credited, or to be credited to the special reserve required in Subparagraph (a) of Paragraph I of said order.

Although much study, time and effort have been devoted to the matter, it has not been possible to date to exhaust consideration of the many factors which should be weighed before submitting a plan to accomplish the purposes of this Commission as set forth in its order. Inasmuch as it is not now possible to calculate the amount of the tax savings which will inure to the benefit of the merged corporation, no

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prejudice will result to anyone as a consequence of the extension of the time herein requested.

El Paso, therefore, prays that the Commission allow it an additional 60 days in which to submit the plan required of it.

Respectfully submitted,

ARTHUR H. DEAN
SULLIVAN AND CROMWELL
48 Wall Street
New York 5, New York

CHARLES V. SHANNON
1700 K Street, N.W.
Washington 6, D. C.

ALLEN R. GRAMBLING
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El Paso, Texas

GEORGE D. HORNING, JR.
800 Colorado Building
Washington 5, D. C.

18982-18985

[Certificate of Service omitted in printing]

No. 15,687

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PEOPLE OF THE STATE OF CALIFORNIA, *Petitioners*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

Petition to Review and Set Aside Orders of the Federal Power Commission

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Come now petitioners, the People of the State of California, being aggrieved by the "Order Issuing Certificates of Public Convenience and Necessity Authorizing Merger With Conditions and Adopting With Modifications the Decision of the Presiding Examiner" of the Federal Power Commission, hereinafter called Commission, issued December 23, 1959, and by the Commission's Order Denying Rehearing and Stay, issued February 17, 1960, in the Commission proceeding entitled "In the Matters of Pacific Northwest Pipeline Corporation, El Paso Natural Gas Company", Docket Nos. G-13018 and G-13019, and respectfully petition this Honorable Court to review and set aside said orders.

JURISDICTION AND VENUE

This petition is filed under and pursuant to the provisions of Section 19(b) of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 831; 15 U.S.C. § 717r(b)), which provides in part as follows:

> "(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for

any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * *"

The People of the State of California intervened in the aforementioned proceeding before the Commission, being Docket Nos. G-13018 and G-13019, as permitted by Section 15(a) of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 829; 15 U.S.C. § 717n(a)) and became parties to said proceeding.

El Paso Natural Gas Company, hereinafter called El Paso, is a natural-gas company within the meaning of the Natural Gas Act and is located and has its principal place of business in the City of El Paso, State of Texas. The Pacific Northwest Pipeline Corporation, hereinafter called Pacific, is a natural-gas company within the meaning of the Natural Gas Act and is located and has its principal place of business in Salt Lake City, State of Utah. Inasmuch as the orders of the Commission as to which petitioners seek to obtain a review relate to El Paso and Pacific, this Court has jurisdiction to review said orders pursuant to Section 19(b) of the Natural Gas Act, *supra*.

Statement of Proceeding

On August 7, 1957, El Paso, pursuant to Section 7 of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 824; 15 U.S.C. § 717f(c); Act of February 7, 1942, c. 49, 56 Stat. 83; 15 U.S.C. § 717f(c)) applied to the Commission for a certificate of public convenience and necessity authorizing it to acquire and operate all of the facilities and properties of Pacific. Pacific, pursuant to Section 7 of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 824, 15 U.S.C. § 717(b) at the same time applied for permission from the

Commission to abandon the same facilities and the service rendered by them, in order to complete the merger.

El Paso sells approximately eighty per cent of its gas for consumption in California. Gas for consumption in California is sold to Pacific Gas and Electric Company (P.G. & E.), Southern California Gas Company and Southern Counties Gas Company of California (Southern California Companies). Said companies are public utilities within the meaning of Section 216(a) of the Public Utilities Code of California, and are subject to the regulatory authority of the California Public Utilities Commission, including the fixing of rates and charges for the sale of natural gas (California Constitution, Article XII, Sections 22 and 23; Public Utilities Code of California, Part 1).

Pursuant to Section 7 of the Natural Gas Act, *supra*, public hearings were held before the Commission upon the said applications. The proceedings culminated in the issuance by the Commission on December 23, 1959, of the aforementioned Order Issuing Certificates of Public Convenience and Necessity Authorizing Merger With Conditions and Adopting With Modifications the Decision of the Presiding Examiner in Docket Nos. G-13018 and G-13019.

As authorized by Section 19(a) of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 831, 15 U.S.C. § 717r(a)), your petitioners on January 19, 1960, filed with the Commission an application for rehearing. On February 17, 1960, the Commission issued its Order Denying Petition For Rehearing and Stay. By said order, the Commission denied your petitioners' application for rehearing and stay.

This Petition to Review and Set Aside Orders of the Federal Power Commission is filed within sixty days after the issuance of the order of the Commission denying your petitioners' application for rehearing. (Section 19(b) Natural Gas Act, *supra*.)

Within the provisions and meaning of Section 19(b) of the Natural Gas Act, *supra*, your petitioners are aggrieved

by the action taken by the Commission in said Docket Nos. G-13018 and G-13019 in that your petitioners are charged with the duty of protecting the interests of the several million gas consumers in the State of California, the vast majority of whom are served by the aforementioned California public utilities.

Specification of Errors

Petitioners submit that, by its Order Issuing Certificates of Public Convenience and Necessity Authorizing Merger With Conditions and Adopting With Modifications the Decision of the Presiding Examiner issued December 23, 1959, and its Order Denying Petition for Rehearing and Stay issued February 17, 1960, the Commission erred in each and all of the following respects:

1. In failing to consider the effect of the merger upon rates and upon the allocation of costs of the combined system.

2. In holding that approval of the merger does not violate the policy of the antitrust laws. This finding was decided upon evidence not contained in the record; upon evidence purported to be supplied through the device of official notice, without proper or timely notice having been given to the intervenors to meet such evidence.

3. In approving the merger despite evidence in the record disclosing the financial unsoundness of Pacific. The public convenience and necessity does not require that the ratepayers of El Paso underwrite a financially weaker corporation.

4. In holding that the merger is justified by reason of the fact that El Paso will have additional Canadian gas. The record shows that Canadian gas is available to El Paso through the device of contract.

5. In holding that the merger furnishes improved utilization of gas reserves and flexibility of operation. There is

no evidence in the record to support such findings or conclusions.

6. In failing to give full and fair consideration to the record. All of the reasons in opposition to the merger were not fully considered by the Commission.

Your petitioners were and are aggrieved in each and all of the respects hereinabove specified, and assign each and all of them as error herein.

WHEREFORE, petitioners respectfully pray:

1. That a certified copy of this petition be forthwith served upon a member of respondent, the Federal Power Commission.

2. That respondent, in conformity with Section 19(b) of the Natural Gas Act, be required to certify and file with this Court a transcript of the record upon which the orders here complained of and sought to be reviewed were entered.

3. That the Commission's Order of December 23, 1959, and its Order of February 17, 1960, denying rehearing, be reviewed and if found unlawful set aside, and that an order be entered remanding the proceeding to the respondent Federal Power Commission with directions to vacate its Orders and to issue instead a new Order which does not include the errors specified herein.

4. That petitioners be granted such other and further relief to which they may be entitled in the premises.

Respectfully submitted,

/s/ WILLIAM M. BENNETT
William M. Bennett
Attorney for the
State of California.

DATED: San Francisco, California,
April 14, 1960.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO }

WILLIAM M. BENNETT, being sworn, says:

That he is the Attorney for the State of California, and that he is authorized to subscribe to the foregoing Petition to Review and Set Aside Orders of the Federal Power Commission; that he has read said petition and knows the contents thereof, and the matters set forth in said petition are true and correct to the best of his knowledge, information and belief.

/s/ WILLIAM M. BENNETT
William M. Bennett

Subscribed and sworn to before me
this 14th day of April, 1960.

/s/ MIRIAM M. JOHNSON
Notary Public in and for
the State of California. [SEAL]

My commission expires Mar. 31, 1963.

[fol. 1367]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,687

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent,

EL PASO NATURAL GAS COMPANY, Intervenor.

On Petition to Review Orders of the Federal Power Commission

Resume of Relevant Matters and Extracts From Transcript of Hearings Before a Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., 2d Sess., May 10, 11, 12, 13, 16, 17, 18, 19, 20, 23 and 24, 1960

Submitted by Intervenor El Paso Natural Gas Company

[Handwritten notation — Lodged — 1-25-61 — Joseph W. Stewart, Clerk]

[fol. 1369]

THE PERTINENT PORTIONS OF THE TRANSCRIPT OF HEARINGS BEFORE THE HOUSE SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT.

In its reply brief, petitioner for the first time in this review proceeding, makes claims and contentions that alleged ex parte communications allegedly were made by representatives of El Paso and Pacific to certain Commissioners who participated in the decision in the case here under review. Petitioner's allegations and contentions are based solely on certain portions[1] of the transcript of hear-
[fol. 1370] ings held during May, 1960 before the House of Representatives Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce.

We set forth below the relevant portions of the transcript, only some of which has been referred to by the petitioner.

All references are to the printed page numbers of that transcript.

A. The Relevant Testimony of Chairman Kuykendall.

Chairman Kuykendall testified that during the period in which he has held office in the Commission, he thought six or seven communications were improper (he testified to none from representatives of El Paso or Pacific at any

[1] Petitioner has cited to the following page numbers of the typewritten transcript; this summary shows the corresponding page numbers of the printed transcript:

Typewritten Tr. p.	Printed Tr. p.	Typewritten Tr. p.	Printed Tr. p.	Typewritten Tr. p.	Printed Tr. p.
444	199	851		887	
461	206	852	416-417	888	
467		853		889	
468	208-210	878		890	
469		879		891	427-433
507		880		892	446-447
508	229-230	881		893	
522		882	427-433	894	
523		883	446-447	895	
524	235-237	884		918	
525		885		919	455-456
		886		949	468-469

time), though he received many communications from local officials (p. 152):

"Mr. Mack.[1] My point is, of course, if it is wrong for one party to make an improper contact, it is wrong for the other party to make it.

"Mr. Kuykendall. True. When I was talking about and gave a rough or rather wild guess of six or seven, I am talking about people who know better or should know better.

Now, these people don't—I dare say, that in our files in this Midwestern case there are all kinds of letters from mayors and councilmen and city officials and, perhaps, county officials, perhaps State officials —urging us to certificate the project so they would have natural gas.

"Mr. Mack. Then instead of having six or seven improper contacts in the last 7 years, you probably had close to six or seven hundred.

"Mr. Kuykendall. Well, yes, now, including letters and telegrams, and all that, why, that would probably be a better guess.

"Mr. Mack. Telephone calls?

[fol. 1371] "Mr. Kuykendall. Some of those, perhaps; not many.

"Mr. Mack. Now, I would like to ask you, have any of these representatives—of course, some of these people representing the consumer groups have been attorneys for villages or various areas, who normally should know better.

"Mr. Kuykendall. Who should what?

"Mr. Mack. Who should know better, who should know that the contacts are improper.

"Mr. Kuykendall. Well, they are not all improper. I think Commissioner Steuck mentioned to me the other day, that some attorney of a community in Missouri had telephoned him, and they didn't have the money to get up here to a hearing or do something or

[1] All persons named are Members of the House of Representatives, except the witnesses and Mr. Lishman, counsel to the Subcommittee.

other, and could he help them, could he advise them. I think that is a most natural request."

None of the communications about which Chairman Kuykendall testified (see, *e.g.*, pp. 61-62, 67) were from representatives of El Paso or Pacific.[1]

B. The Relevant Testimony of Commissioner Kline.

Commissioner Kline testified with respect to many conversations with various representatives of different natural gas companies. A tabulation of the visitors and telephone calls recorded by Commissioner Kline's secretary, July 1958-April 1960, are included on the transcript of pages 238-246.

One of the persons who had a number of visits and calls with Commissioner Kline was Mr. Harry Wimberly, who as Commissioner Kline testified was a former Commissioner (p. 197; see 197-202 generally relating to Mr. Wimberly's visits and calls). Mr. Wimberly was employed by Pacific prior to and subsequent to El Paso's acquisition of Pacific stock; and after the merger on December 31, 1959, [fol. 1372] he was employed by El Paso. The relationship between Commissioner Kline and Mr. Wimberly was primarily a social one (see pp. 197, 204-206, 209, 235-237, 282-283) and as Commissioner Kline testified (p. 199):

"Mr. Lishman. Now, on November 14, 1959, did Mr. Wimberly call on you again?

"Mr. Kline. That is correct.

"Mr. Lishman. Do you recall when he discussed at that meeting?

"Mr. Kline. No; I do not. I might say as far as Mr. Wimberly is concerned, I don't believe that he ever discussed any business matter with me except on two or three occasions. Now that is not true of some of these other representatives who never came in except on business."

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[1] Chairman Kuykendall was questioned and testified at great length about the facts and the bases for the Commission's decision in the *El Paso-Pacific* merger case (pp. 26-33, 35-37, 76-77, 85, 176-177).

Commissioner Kline then testified (p. 199):

"Mr. Lishman. On April 3, 1959, he called again.

"Mr. Kline. I guess from seeing just that date on a piece of paper, I cannot recall at all.

"Mr. Lishman. There is a press release of the Power Commission in April, 1959 stating that the Commission had authorized El Paso to construct some facilities. Do you recall whether or not on the February 2 visit Mr. Wimberly discussed that matter with you?

"Mr. Kline. No; I am certain he did not, because at that time El Paso and Pacific Northwest were not merged, *and I don't ever recall him having discussed any El Paso matter with me.*" (Emphasis supplied.)

This was followed by further pertinent testimony (pp. 199-200):

"Mr. Lishman. Again on October 21. Do you recall what was discussed at that meeting?

"Mr. Kline. No; I have no recollection, unless my memory might be refreshed through some press release or something of that nature.

"Mr. Lishman. Well, during this time weren't active merger negotiations going on between El Paso Natural [fol. 1373] Gas Co. and Pacific Northwest Pipe Line Corp.?

"Mr. Kline. That is true.

"Mr. Lishman. Wasn't there discussion of an antitrust suit being brought by the Department of Justice?

"Mr. Kline. That is true during all of this period, but I do not believe Mr. Wimberly ever discussed any phase of that case with me at any time. He has never at any time approached me improperly and I don't believe he ever discussed a case while it was pending in any manner with me."

Commissioner Kline was questioned about the decision in the El Paso case (pp. 200-202):

"Mr. Lishman. Well, what greater public interest than preventing monopoly, and trying to establish

at least a modicum of competition in this business, was served by the Commission stepping in and impeding the Department of Justice when it was already committed to serving the public interest?

"Mr. Kline. Well; Mr. Lishman, the gas transmission business is a natural monopoly. It is so recognized, and that is why it is regulated.

"We have had other instances, too. It seems to me, that in every instance where we have had two or more pipelines going into the same area that we have either had trouble or we have had higher costs of gas.

"Now that is particularly true of the New England area and I am sure Commissioner Connole can tell you that much better than I can. That is because we have two pipelines going into the New England area, the cost to the New England consumer is much higher than it would be with only one pipeline.

"We had two pipelines going into the Detroit, Mich., area. They were fighting each other constantly and we thought it was so detrimental to the public interest that it was one of the reasons we authorized Panhandle to abandon service to the Detroit area.

[fol. 1374] "We feel that the antitrust laws do not apply to the same extent to a regulated industry, such as the gas transmission industry, as they apply to an unregulated industry such as the steel industry or the oil and gas industry generally.

"Mr. Lishman. Do you feel the Commission has the authority under existing law to oust the Department of Justice from jurisdiction?

"Mr. Kline. No, and the Department of Justice may proceed with the action in Salt Lake City if it so desires.

"Our only duty is to determine if the merger was in the public interest, and we so determined.

"Mr. Lishman. Well, what factors do you consider as being in the public interest?

"Was there a demand for the supply of gas that would be made available to consumers by this merger?

"Mr. Kline. No. El Paso had a number of gas wells in production in Canada. They were desirous of ac-

quiring Pacific Northwest in order to give them another source of supply for the southern California market.

"With the Pacific Northwest system a part of their own system they would be able to have a much more flexible system. They would have two sources of gas coming in from two different directions.

"Mr. Lishman. Was it necessary that it be done immediately, rather than deferring action until the Department of Justice had completed its complaint and proceeding?

"Mr. Kline. As I recall, the original El Paso merger application was filed about the middle of 1958, in July or August. We took no action upon that for more than a year.

"Mr. Lishman. But the complaint against the merger was filed in 1957; isn't that correct?

"That is by the Department of Justice?

"Mr. Kline. I assume so; I do not recall.

"Mr. Lishman. We have it here, and I think it is in the record, so I don't think we need to refer to that again.

[fol. 1375] "Mr. Kline. But many States out there, the public service commissions, and other public officials of the various Western States other than the State of California were all urging the merger and all urging that we take action upon this application, and we had no alternative, we felt, other than to proceed or to find out whether the Department of Justice would proceed with its action, and accordingly we left it up to the Federal district judge in Salt Lake.

"If he wished to proceed with the antitrust suit that was quite agreeable with us. If he did not, then we felt we should prosecute and push as rapidly as possible the merger application.

"Mr. Lishman. Well, you knew that the Department of Justice opposed your position in this matter?

"Mr. Kline. That is true and we invited them to participate and appear before us and present any reasons as to why the merger was not in the public interest."

Other testimony by Commissioner Kline regarding Mr. Wimberly related to visits or calls in 1960 (see pp. 202-203). Commissioner Kline then testified (p. 204):

"Mr. Lishman. Mr. Kline, I would like to ask this question. Would the fact that Mr. Wimberly as a former member of the Commission, and he was apparently one of your friends, in any way have tipped the scales in favor of the El Paso decision in this particular matter?

"Mr. Kline. Absolutely not. I might say this further: Mr. Wimberly represents another company before us. They recently had an application for temporary authority to construct a $43 million extension of their pipeline system. The other three Commissioners had approved that. I said I disagreed and I filed a dissent, and the other three Commissioners came around to my view.

"That was on temporary authority and the basis of my belief was that we should not grant temporary authority for that large a project, but I think that [fol. 1376] will illustrate that Mr. Wimberly has no influence on me at all.

"Mr. Lishman. What were those other companies that Mr. Wimberly represented?

"Mr. Kline. Well, they are the American Natural System. Now I don't know which particular ones he represents, whether it is American Louisiana, Michigan, Wisconsin or the entire system."

Testimony by Commissioner Kline relating to other individuals followed, and then turned to Mr. Kayser. According to Commissioner Kline's secretary's record of telephone calls and visits, a total of four were made by Mr. Kayser, President of El Paso. Commissioner Kline testified about these as follows (p. 209):

"Mr. Lishman. Now, Mr. Kline, will you turn to page 10, please, of that document? Do you know a Mr. Paul Kayser?

"Mr. Kline. That is true.

"Mr. Lishman. Will you please identify him for the record?

"Mr. Kline. He is president of the El Paso Natural Gas Co.

"Mr. Lishman. Is it correct he made some calls in your office, one in 1958 and four in 1959?

"Mr. Kline. Yes, that is true.

"Mr. Lishman. Do you recall what was discussed at any of these meetings?

"Mr. Kline. Now, El Paso Natural Gas Co. probably has 50 to 100 matters pending before us at all times. Generally when, or sometimes when, Mr. Kayser is in town testifying in a case that is going on before an examiner he *just drops in for 2 or 3 minutes to say hello, and I think that is all that ever happened on any of these occasions.*

"I have never had an extended conversation with Mr. Kayser, it has just been—I don't think I spent 30 minutes with him in all the time I have known him. *He just drops in to say hello and that is about it.*

[fol. 1377] "Mr. Lishman. But at no time did he discuss such matters as Commission action with respect to construction of facilities or purchase of gas?

"Mr. Kline. He has asked us to hurry some cases along,[1] in fact everybody is always asking us to do that and I don't doubt but what he did that.

"Mr. Lishman. Did he ever discuss with you the examiner's opinion concerning the authorization of independents selling gas to El Paso?

"Mr. Kline. Not to my recollection.

"He did come in—well, now I am not certain it was Mr. Kayser or one of his representatives, when they were trying to get gas, to get authorization for the construction of a pipeline from the Aneth Field in Utah down to El Paso's main line, they had a $26 million construction project, and he or his attorneys were in, I don't know whether it was Kayser or not,

[1] Quoted by petitioner in its reply brief at p. 14, although not explicitly attributed to Mr. Kayser

were in a number of times, trying to get that expedited.[2]

"Mr. Lishman. But you never discussed the merits of the case with him?

"Mr. Kline. *I have never discussed the merits of the case that I recall,* with Mr. Kayser." (Emphasis supplied.)

Following further identification of representatives of other companies with whom he met and the subject of some of the conversations, he testified as follows (pp. 235-237):

"Mr. Lishman. Mr. Kline, when the subcommittee received the desk calendar[3] it was found some pages were, a few pages in December were missing, the 25th, 26th, and 27th of December—the 28th.[4]

[fol. 1378] "Do you know any reason why those pages should be missing?

"Mr. Kline. No; to the best of my knowledge they were all there when I delivered them to the chairman. I didn't recall that any were missing. They may possibly be in my desk. I picked them up out of the drawer. I have no knowledge of that fact that any sheets were missing at all. This is the first time that I even knew about it. They were in my desk with a rubberband around them and I just picked them up and brought them up here. Now that would be last year's calendar.

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[2] In October 1958, the Secretary of the United States Department of the Interior scheduled a shutdown of oil-gas wells where there was excessive gas flaring for November 10, 1958; and on that date he so ordered the shutdown until the necessary pipelines and gathering facilities were constructed. Oilgram, October 31, 1958, p. 3; Oilgram, November 10, 1958, p. 5.

[3] On Saturday or Sunday, April 23 or 24, 1960, Commissioner Kline's locked desk in his office at the Commission was rifled by unknown persons. His desk calendar found its way into the hands of counsel for the House Committee on Legislative Oversight. New York Times April 29, 1960, p. 1.

[4] These dates were December 25th, 26th, 27th and 28th, 1959, and therefore subsequent to the decision issued by the Commission in the El Paso case. See also the text at p. 12 infra.

"Mr. Lishman. Yes, sir.

"Mr. Kline. I would have no knowledge at all of why they were missing as they apparently were.

"Mr. Lishman. On the dates mentioned do you recall whether or not you had occasion to attend a dinner party given by Mr. Wimberly?

"Mr. Kline. Well, now, I don't believe—I believe I testified to attending a dinner party, but I don't believe I testified to attending one at that time. I believe the dinner party I attended was in February.

"I think that is when an announcement of his daughter's marriage was made, and I am positive that I didn't attend a party in December. I know it wasn't a dinner party and I don't believe we were over for cocktails or anything during the Christmas season. It is possible we could have been but I don't believe so.

"Mr. Lishman. Do you recall any social event you might have attended during those days that have been mentioned, December 26, 27, 28?

"Mr. Kline. Yes; that was between Christmas and New Year's and there is almost always a cocktail party or two somewhere and I am certain I attended some of them.

"Mr. Lishman. But you don't recall any special occasion.

"Mr. Kline. No; I don't.

"Mr. Lishman. Mr. Kline, many of these calls you had were either with former Commissioners or former [fol. 1379] employees of the Commission, attorneys, and so forth, men apparently versed in the practice before the Commission. Do you know any good reason why they should call on you for matters not connected with the merits where they could have obtained the information probably just as well from members of the staff?

"Mr. Kline. Well, now, they probably could have obtained most of this information from the staff, but our staff sometimes does not give what these attorneys feel are satisfactory answers.

"Our staff tells them they just can't get to their case, and when the request is made to expedite a case, the

staff will often give an answer, 'We won't be able to set that down for 2 or 3 months. We have other matters that are pending,' and then is when they come to us and ask us to set it down.

"Now, I will say this, as to these calls generally, this looks like a great number of calls but when you figure that we are regulating 3,000 or 4,000 independent producers and pipeline companies, and they have thousands of matters pending before us every year, it is only on the exceptional case where they feel their case is being neglected that we get a phone call or request to expedite or request to set the case down.

"Now in many of these calls the staff can't take action, such as where they ask to waive the intermediate decision procedure, as where they ask to expedite the time for filing exceptions. There are numerous matters that the staff has no jurisdiction over, and all they can do is send them to us, and I will say this, as to these calls, I think that practically every one listed here would be a perfectly legitimate call for a perfectly legitimate business reason. We have to get both sides of a case. On the ordinary case we get a memorandum from the staff which gives their viewpoint.

"Now often that is prepared by a man who has never seen an oilfield or never seen a pipeline, and while he does his best a man in the office of Washing-
[fol. 1380] ton sometimes doesn't appreciate the fact that it is vital that a gas well be connected up, and that is why the representatives come to us and point out their position a little more directly.

"Mr. Lishman. I have no further questions, Mr. Chairman.

"Mr. Kline. Mr. Lishman, I want to say this, I will do my best to find those missing sheets. I did not know they were missing, and they may be right in there in my desk somewhere, and just have slipped out and if they have I will bring them over here.

"Say, I think maybe I recall why those sheets were missing. My calendar only runs until the end of the year, and usually I make notations for the year 1960

on the 1959 calendar on the last few pages, and I may have done that, such as something that would occur say in April 1960. I may have taken them out, I shouldn't have taken them out but I may have just torn them up for some reason but I took them out to make notes on my new calendar and that is a possibility. I don't recall."

Representative Moss, in questioning Commissioner Kline, referred to the Department of Justice "contacts" (p. 253):

"Mr. Moss. You mentioned the Congress. Have you had any contacts from anyone within the executive department of the Government?

"Mr. Kline. That is [a] very broad question.

"Mr. Moss. We are talking about a field here which is fairly well defined in both our minds.

"Mr. Kline. Well, we have many dealings with the Interior Department, the Justice Department, practically every department of Goverment.

"Mr. Moss. What type of contacts? We are talking now about contacts where attempts are made to discuss the merits of a matter before the Commission. I assume in Justice, an instance such as El Paso, they did attempt to persuade the Commission to their way of thinking. I am interested in other contacts from [fol. 1381] anyone else in the executive department.

"Mr. Kline. Well, I have never had any contacts of an improper nature that I recall at all from the executive department of the Government.

"Mr. Moss. Any discussions of cases before the Commission?

"Mr. Kline. We have discussed cases. We have cases in which the Interior Department, the Army Engineers, are frequently involved, particularly hydroelectric cases, we have to work with them. The Department of State, we have had to discuss matters with them.

"Mr. Moss. Of course we recognize that, and those are not the type of contacts I am asking about. I am

asking about contacts that would not be required in the normal discharge of their duties."

At the close of Commissioner Kline's testimony, he made several statements pertinent to the issue here (pp. 284-288):

"Mr. Moss. Am I to understand, then, that it is your position that not a single name listed in here, in contacting you, ever discussed the merits of a case?

"Mr. Kline. No, that is not my position.

"Mr. Moss. Other than Mr. Corcoran?

"Mr. Kline. No, that is not so. I have testified that if they got on the merits, we immediately, either I or in one or two instances the attorney himself has said, 'Well, we are on the merits of a case that is before the Commission,' and we have immediately stopped discussion. That has happened several times with different parties. But we have not pursued it in any of these instances.

"Mr. Moss. But you can't recall which of the parties were involved in those instances?

"Mr. Kline. Well, I testified, I believe, to some of them.

"Mr. Moss. You testified to two, and I am not certain that they are in here. I will look and see.

[fol. 1382] "Did Mr. Clammer ever discuss with you where you got around to merits and had to be cautioned not to comment?

"Mr. Kline. No, he never has.

"Mr. Moss. You already testified about Mr. Corcoran.

"How about Mr. Cossey?

"Mr. Kline. No, I don't believe he has ever."

[Representative Moss then went through a list of a number of persons, none of whom are or were representatives of El Paso or Pacific at any time, until] (p. 285):

"Mr. Moss. Mr. George Guy?

"Mr. Kline. No, I don't recall that in his case."

. . . . . .

"Mr. Moss. Mr. Paul Kayser?

"Mr. Kline. No, he is not a lawyer.

"Mr. Moss. He doesn't have to be a lawyer to get close to the merits.

"Mr. Kline. *No, I never got to stopping him.*"

[Representative Moss continued through the alphabetical list until] (p. 288):

"Mr. Moss. Mr. Wimberly?

"Mr. Kline. He has been a former Commissioner and he appreciates the position we are in. *He just never discusses any matter that he is interested in.*

"Mr. Moss. He has never skirted that even?

"Mr. Kline. *He is very scrupulous to avoid it.*" (Emphasis supplied.)

C. The Relevant Testimony of Commissioner Connole.

As a preface to a detailed statement of matters relating to the Midwestern rate-of-return case, Commissioner Connole stated (p. 291):

[fol. 1383] "... Before recounting the events that took place while the matter was under active Commission consideration, I must state one firm conviction.

"I firmly believe that normally there is no good reason or necessity to describe the details of the decisional process followed in reaching a Commission decision. I should never have done so had not my alleged position become the subject of public discussion and of concern to this committee. Because my position has become an issue, however, it is necessary for me to breach what I believe to be the privacy of the Commission meeting room, a matter as sacred, I dare say, as that of any other judicial or quasi-judicial body.

"The difficulty of recalling the exact thought processes by which quasi-legislative and quasi-judicial decisions are made are immediately apparent to a deliberative body such as this committee and indeed, should not be hard for any one to understand."

Committee counsel questioned Commissioner Connole about Mr. Wimberly's dinner party in late December 1959 (p. 296):

"Mr. Lishman. Have you ever met any pipeline company representative at a social function?

"Mr. Connole. Met them and been introduced to them?

"Mr. Lishman. Yes.

"Mr. Connole. I suppose I have; yes.

"Mr. Lishman. You don't recall any such occasion?

"Mr. Connole. I don't recall ever—well, I wouldn't say that I do not. My memory is pretty weak on those kinds of things. I don't recall any specifically right now.

"Mr. Lishman: Do you know Mr. Wimberly?

"Mr. Connole. Yes.

"Mr. Lishman. Did you attend a dinner given by him in December 1959?

"Mr. Connole. I don't think I did; no. In fact, I know I did not."

[fol. 1384] Commissioner Connole then testified in response to questions concerning the Commission's decision in the El Paso-Pacific case (pp. 340-342):

"Mr. Lishman. Now, Mr. Connole, did you participate in the merger of El Paso and Pacific Northwest Pipe Line?

"Mr. Connole: Yes, I did.

"Mr. Lishman. *Did any representative of El Paso ever contact you in that case?*

"Mr. Connole. *No, he did not.*

"Mr. Lishman. Did you approve the merger?

"Mr. Connole. I signed the order that approved the merger, yes.

"Mr. Lishman. Did you have any misgivings about that merger?

"Mr. Connole. I had the same doubts that I always have as a judge. I suspended judgment on the matter

until I had an opportunity to thoroughly go into it. After doing so, I had no further doubts.

"Mr. Lishman. Well, are you familiar with the fact that on July 22, 1957, the Department of Justice filed a complaint against El Paso Natural Gas Co. and Pacific Northwest Pipe Line Corp.?

"Mr. Connole. Yes, I am.

"Mr. Lishman. Alleging violation, alleging the consummation of the proposed merger would violate section 7 of the Clayton Act?

"Mr. Connole. Yes, I am.

"Mr. Lishman. Do you believe that the Commission, Federal Power Commission, has authority to oust the Department of Justice from jurisdiction?

"Mr. Connole. No, I do not.

"Mr. Lishman. In Clayton Act proceedings?

"Mr. Connole. No, I do not.

"Mr. Lishman. At the time you approved the merger did you know you were proceeding contrary to the express desire and urgings of the Department of Justice?

"Mr. Connole. No, I did not.

"Mr. Lishman. Didn't you have discussion with fellow Commissioners about that?

[fol. 1385] "Mr. Connole. About the expressed desires of the Department of Justice?

"Mr. Lishman. Yes.

"Mr. Connole. The position of the Department of Justice was very often discussed. Yes, Mr. Lishman.

"Mr. Lishman. Didn't you know they did not want you to approve that merger?

"Mr. Connole. I didn't know whether they did or not.

"They never appeared in the proceeding although we had invited them to do so.

"Mr. Lishman. Had you seen the correspondence, including the correspondence, part of which is already in the record indicating that the Department of Justice opposed this merger?

"Mr. Connole. Opposed the merger, oh, yes.

"Mr. Lishman. Opposing your action?

"Mr. Connole. I didn't know that.

"Mr. Lishman. Opposed your action in giving approval to the merger.

"Mr. Connole. No; I still don't know that they did.

"Mr. Lishman. I refer you to the letter in the record here. Were you here when the letter of former Assistant Attorney General Hansen was read into the record?

"Mr. Connole. Which record was that, Mr. Lishman? Was that the letter to which we responded by telling him that the judge told us to go ahead?

"I am familiar with that letter; yes.

"Mr. Lishman. We will show you the letter.

"The Chairman. The letter in which you responded and wrote to the judge.

"Mr. Connole. Yes.

"The Chairman. As the result—

"Mr. Connole. Yes; I think that is the colloquy to which we are referring, Mr. Chairman.

"Mr. Lishman. I will read again from the May 23, 1958, letter which is already in the letter from Judge Hansen to the Chairman, Chairman Kuykendall.

[fol. 1386] "The Chairman. I think he said he was familiar with the letter, Mr. Lishman.

"Mr. Lishman. He said he didn't know that the Justice Department disapproved of the Commission proceeding to approve the merger.

"And I just really want to sharpen his recollection on that because I believe this letter will establish that the Justice Department did not wish to have the Commission go ahead and approve the merger, while the Justice Department had a complaint under the Clayton Act still pending.

"The Chairman. Are you familiar with the letter reference, it is all in the record.

"Mr. Connole. I think I do know.

"Mr. Lishman. I will hand you the letter to save time.

"Mr. Connole. OK.

"Yes; I am familiar with this letter, Mr. Lishman.

"Mr. Lishman. Wouldn't you say from reading that letter that the Department of Justice disapproved

the Commission going ahead and consummating its approval of the merger?

"Mr. Connole. I would say they were raising a question of so-called primary jurisdiction, which has plagued regulatory Commissions and courts for years. That is the way I looked at it, as a matter of discussion of primary jurisdiction.

"Mr. Lishman. I think the letter itself will show that answer is equivocal at best." (Emphasis supplied.)

Commissioner Connole subsequently was questioned about various representatives of different companies who visited him or with whom he had conversations, which he identified from the list of persons recorded in Commissioner Kline's secretary's desk book (pp. 343-344):

"Mr. Lishman. And you heard that testimony bring out the rather numerous visits that were paid to his office by representatives of companies regulated by the Commission, is that correct?

"Mr. Connole. Yes, I have.

[fol. 1387] "Mr. Lishman. It is also correct that unlike Commissioner Kline, your secretary did not keep an appointment book, and you kept no log of visitors that attended your office, is that correct?

"Mr. Connole. I have no such log, this is correct.

"Mr. Lishman. Do you, while you were listening to Commissioner Kline's testimony, did it recall to you that some of those same people had also visited you in your office or made phone calls to you?

"Mr. Connole. Some of them had stopped in from time to time, yes.

"Mr. Lishman. Could you identify who those people were without having to go through the long process of asking names?

"Mr. Connole. You mean tell you how many of these men had at any time been in my office?

"Mr. Lishman. Yes.

"Mr. Connole. I would say perhaps—

"Mr. Lishman. I would like to have the name of the individual.

"Mr. Connole. Half of them had been in my office one time or another.

"Mr. Lishman. Could we have the name of the individual as well?

"Mr. Connole. Well, starting from page 1, who had been in the office, I suppose Mr. Clammer has been in, Mr. Corcoran, I don't recall Mr. Cossey, he may have been in.

"Mr. Domers of course while he was with the Commission.

"Mr. Lishman. Did Mr. Domers call on you after he had left the Commission?

"Mr. Connole. Yes, but never on Commission business.

"Mr. Foster, being a former counsel, I suppose has been in. Mr. Gardner, of course, I don't recall whether Mr. Goldberg has or not. Mr. Grove, Mr. Guy, I think did come in a time or two, Mr. Jennings, I think has been in. Mr. Kayser, I think. I don't know Mr. Leverett. I think Mr. McAllister has stopped by since [fol. 1388] he left the Commission. I don't know Mr. McCannon. Yes, I believe Mr. McIntire introduced himself to me when he was appointed to the job he now holds here.

"Mr. R. Merrill, I don't know that I could say he has been in or not.

"Mr. Parriott, I don't think has been in. Mr. Pyburn has been in. Mr. Roetzel, I think has been in. Mr. Ross has been—

"Mr. Lishman. Mr. Bradford Ross?

"Mr. Connole. Yes. I don't know—yes, I guess Mr. Sanders came in one time to introduce himself. Mr. Scott has been in. Mr. Wimberly has been in.

"Mr. Lishman. Mr. Wimberly is a former Commissioner.

"Mr. Connole. Yes, and Mr. Wolf and Mr. Woodfin have at one time or other also been in my office.

"Mr. Lishman. Do you recall how many times these, any of these gentlemen called on you?

"Mr. Connole. I have no record of it; no, I do not recall, Mr. Lishman. I know it is not very often.

"Mr. Lishman. Is it correct that in addition to the persons you have named other persons connected with the pipeline companies have called on you?

"Mr. Connole. We have a great many visitors, Mr. Lishman, and most of them naturally enough are the men associated with the business which we regulate. I dare say others have probably had occasion to visit with me, yes."

Commissioner Connole was then questioned by the Committee's counsel using names which were on a list of cards which Commissioner Connole had in his possession and which he supplied to the Committee; some of the further testimony was as follows (pp. 344-345):

"Mr. Lishman. You said Mr. Guy came in to see you. Whom did he represent?

"Mr. Connole. I didn't know he represented any-[fol. 1389] body when he came in. He identified himself as a former attorney general of the State of Wyoming and a friend of the attorney general of the State of Connecticut at that time.

"Mr. Lishman. You did not know he was representing El Paso?

"Mr. Connole. I did not.

"Mr. Lishman. Did you hear Commissioner Kline so testify?

"Mr. Connole. That he knew I knew he was—

"Mr. Lishman. No; I am not asking whether he knew. Did you hear Mr. Kline testify that Mr. Guy represented El Paso?

"Mr. Connole. Yes.

"Mr. Lishman. Did you know whether El Paso has any business in Cheyenne, Wyo.?

"Mr. Connole. I don't know whether it does nor does not. I think the Rock Springs project goes through there. It is a project they have but I don't know."

Representative Bennett then questioned Commissioner Connole from the names shown on Commissioner Kline's

secretary's list of appointments (pp. 345-350). The first colloquy was as follows (p. 345):

> "Mr. Bennett. Mr. Connole, you went through the list of appointments of Commissioner Kline, that were put in the record last week rather hurriedly, and I wish you would take Mr. Kline's statement and tell us, starting with the first page, how many times you recall these people having come to your office.
>
> "Mr. Connole. I will be glad to do that, Mr. Bennett. I will preface the answer by this observation. I have no—this will be the grossest guess. I also say to you that *not a single man* on that list has ever, at the occasions mentioned by Mr. Kline *or any other time, made any improper representation to me.*
>
> "Every single one of them came in on either the social call of a pure introductory basis or on some matter wholly unrelated." (Emphasis supplied.)

[fol. 1390] Commissioner Connole testified about possible discussion of the merits of pending cases and his testimony included (pp. 345-346):

> "[Mr. Connole]. I don't recall Mr. Clammer doing it.
>
> "I don't recall Mr. Cossey, certainly not Mr. Domers. Some of these cases pended for so long that, for example, Mr. Foster, represents two of the applicants in the *Catco* case, and during the long protracted litigation in which that case is involved he may have come in, but I certainly had no occasion to talk to him about the merits of the case.
>
> "Mr. Goldberg, no; Mr. Grove, no; Mr. Guy, no.
>
> "Mr. Jennings is a lawyer but he never came in—of course, the *Phillips* case is pending all the time, so every time he was in the office, it was only a scattering of times, two or three at the most, it was during a pending case.
>
> "Mr. Kayser, I don't recall if his visit coincided with a pending case or not."

After testifying with respect to several other representatives of various other companies, Commissioner Connole testified concerning Mr. Wimberly (p. 346):

> "Mr. Wimberly, I don't consider representing the company in the sense of having anything to do with the pending case. So I don't believe there was anything pending when he was here."

Commissioner Connole testified generally about discussions he had with company representatives (pp. 346, 350-351):

> "Mr. Bennett. Well, then, is it a fair summary of what you have just said that you did not engage in discussion with any other representative of a gas company, pipeline company, or natural gas company similar to the one you had with Mr. Corcoran?
>
> "Mr. Connole. I think that is fair. One or more, and I cannot in all candor under oath tell you which [fol. 1391] or who, but one or more may have mentioned this question of 'When are we going to get these cases out that have been sitting for lo these many months,' which is substantially what Mr. Corcoran did. And on occasion some of them have perhaps asked me those questions."
>
> • • • • • • •
>
> "Mr. Moss. Mr. Connole, you appear to have rather a difficult time recalling details of visits to your office.
>
> "Do you have a sufficient recollection to indicate whether in your opinion, you have ever had a contact from any source which you regarded as an improper one?
>
> "Mr. Connole. I would say, Mr. Moss, that I have had opportunities since this meeting began to consider carefully that question, and I am unable to tell you that there was an instance when *I can frankly say to this Committee that anyone has tried to influence me on the merits of a case.*

"Mr. Moss. I don't think it is necessary to try to influence you, is it, for it to be improper? A discussion of the merits is improper; is it not?

"Mr. Connole. Such discussion, as I understand the meaning of the word, and I am sure you mean it, is indeed improper and I include that in your category.

"Mr. Moss. You would include that in the category of influencing?

"Mr. Connole. I include that in the category of people who have not been to see me.

"Mr. Moss. You don't recall any instance where anyone tried to discuss the merits of a pending matter?

"Mr. Connole. You say I do not recall; that is correct; I do not recall.

"I think they would have impressed themselves so vividly on my memory I would have remembered it.

"Mr. Moss. Have you ever had to caution any conversation to get away from the merits or touching upon the merits?

[fol. 1392] "Mr. Connole. I don't think so. I have made some—not when they had already launched on a discussion. From time to time, but very infrequently, and I think I have already testified how infrequently they were, when people have come in to see me, and I have known there were cases pending in which their company or their clients were involved, I have said courteously, 'Of course, old buddy, remember the A, B, C case' or some language to that effect, to avoid any such inference.

"Mr. Moss. You have always tried to anticipate any difficulties and admonished them in advance against such discussion?

"Mr. Connole. Yes; I don't want to set myself up here sanctimoniously, but I think all of us on the Commission are quite conscious of this judicial temperament and I have done exactly as you say.

"Mr. Moss. Of course, you heard the testimony of Commissioner Kline, who indicated that he had on a number of occasions had to cut a conversation short, raised the question of possible involvement in the merits?

"Mr. Connole. Yes; I did hear that testimony, Mr. Moss.

"Mr. Moss. You had no such experience?

"Mr. Connole. No; I don't recall ever doing that, ever having to do that. I don't think I ever did, in fact.

"I am sure it would be something that would impress itself firmly on my memory, so firmly that indeed I would remember." (Emphasis supplied.)

Representative Derounian questioned Commissioner Connole about several persons whose names were on the cards furnished by Commissioner Connole to the Subcommittee (pp. 358-365). One of those persons was Mr. A. R. Grambling (p. 360):

"Mr. Derounian. Do you know Mr. A. R. Grambling, representing El Paso Natural Gas, El Paso, Tex.?

"Mr. Connole. Yes.

[fol. 1393] "Mr. Derounian. Have you talked to him about gas and the weather and things like that?

"Mr. Connole. I have talked to him when he has been in the office."

Representative Derounian continued in alphabetical order, finally reaching the name of Mr. Wimberly (p. 364):

"Mr. Derounian. What about Harrington Wimberly, 1001 Connecticut Avenue, do you know him?

"Mr. Connole. Yes, former Commissioner.

"Mr. Derounian. Have you ever attended a party at his house?

"Mr. Connole. I have been to his house on one or two occasions, yes.

"Mr. Derounian. And is he a friend of yours?

"Mr. Connole. He is a friend, sure.

"Mr. Derounian. Personal?

"Mr. Connole. No, I wouldn't classify him as a close personal friend.

"Mr. Derounian. Was this gentleman a former Commissioner?

"Mr. Connole. Yes.

"Mr. Derounian. And he is in the gas business representation, isn't he?

"Mr. Connole. I don't think so. I think he is public relations or something; I don't know what he does with the companies, to be honest.

"Mr. Derounian. I think I read somewhere in the press over the weekend that you were quoted as denying that you attended Wimberly's party.

"Mr. Connole. That is correct.

"Mr. Derounian. You did or did not.

"Mr. Connole. I did not.

"Mr. Derounian. I thought you just said you attended.

"Mr. Connole. The press comment was whether I attended the December 1959 party. The answer is 'No.' You asked me, 'Have you ever been to his house to a party?' The answer is 'Yes; I have been there on one or two occasions.' "

[fol. 1394] The closing colloquy with Representative Derounian and the opening statement of Commissioner Connole following a recess, were as follows (pp. 365-367):

"Mr. Derounian. I would just like to say again that for a consumer's man you have palled around and had friendly talks with an awful lot of gas producers and owners; and, while I am not making any inferences, I just want to get the record straight.

"Mr. Connole. I am delighted that you are not implying anything because I certainly do not infer anything, and I think it is part of my business to open my doors to such taxpayers as come in."

• • • • • • •

"Mr. Connole. I would like to take this opportunity to make abundantly plain something which seems to have been misunderstood. And that is my position which Mr. Derounian sees characterized, as indeed it has been characterized, as a so-called consumer's man. I am not identified with any one group. However, I am proud to be characterized as a friend of the consumer because none less than the draftsmen of the

act and the courts which have interpreted it have told me that that is my job, and no more recently than 2 weeks ago Electrical World, the McGraw-Hill publication for the electrical industry, speculated that whether Connole is or is not being dropped because he is a friend of the consumer is rather anomalous because that is precisely what he is paid to do. I quote from the Electrical World.

"However, I have felt that the best way to protect the consumer is by keeping a healthy, viable, vigorously regulated utility structure. To that end I cannot help telling this committee that I firmly agree with the statements enunciated by that great administrator and great regulator, Joseph Eastman, who, in his last speech also before leaving the Commission, made this remark which has become something of a legend in the utilities regulating field. He said, 'Evan-
[fol. 1395] gelists, crusaders, and zealots have their place before but not on a regulatory commission.' I take that as my text for the Commission. I am not beholden to any group; I am not servile to any group; I don't set out to protect myself or any other group. If as a matter of accident someone has taken the trouble to analyze my opinions and find they happen to go in one direction or another, then I am, of course, bound by where they lead me. But I cannot help telling this committee that if Mr. Derounian is interested in tearing down the image of a consumer's man, as I understand that image to be in his mind, then I congratulate and wholly agree with him, and certainly nothing in the casual listing of names which happen to be in the form of a secretarial list should be characterized as affecting that in any way, in my judgment, and I also want to correct the record to remove the word 'pal' if I have used it.

"I have not 'palled around,' as that word is used, with any of these men whose casual conversation I have quite honestly and in truth reported to you.

"Most of those conversations have consisted of no more than 'How do you do, sir,' and 'I am delighted to meet you,' and that is it. Thank you, Mr. Chairman.

"The Chairman. Mr. Connole, is it not a fact that in order to perform the duties and responsibilities attending a member of the Federal Power Commission, that in many instances and with many problems, it is necessary to discuss them with people associated with the particular industry?

"Mr. Connole. I think it is, Mr. Chairman. It would be most unusual if my contacts were with the bricklaying industry when I am engaged in regulating the oil and gas and electric industry.

"I agree with you a hundred percent.

"The Chairman. There are, of course, many, many problems arising that are administrative in character, and rulemaking to the point of legislation and that is [fol. 1396] what I consider rulemaking generally to consist of, and in dealing with problems which are in no way adjudicatory which becomes necessary to discuss with people connected with the particular industry.

"Mr. Connole. That seems to be true, yes.

"The Chairman. And carrying out that duty and responsibility you have had many conversations with people from the industry. That is not something which altogether has been with producers and what are referred to as the long lines, interstate lines, has it?

"Mr. Connole. Far from it. Many of the names for example read into the record were some of the largest consumers in the State.

"Pacific Gas & Electric is one of the largest consumers in the country.

"The Chairman. You are talking about distributors now?

"Mr. Connole. Yes, who are the customers.

"The Chairman. They are the distributors who serve the consumers.

"Mr. Connole. Yes; we have no jurisdiction over the distributing companies.

"The Chairman. I know a whole lot about that, too, which is a pretty sad picture and that goes for the whole industry, but you meet with not only those from

the producing and the transportation end of it in interstate commerce but also those who are in the distributing end, and also with the regulatory agencies of the various States regarding certain problems and with many other people in connection with the security end of it, as well as the actual administration, is that not true?

"Mr. Connole. Mr. Chairman, indeed it is.

"The Chairman. Was it not true that the act itself, not by positive direction, but by inference, required that to be done?

"Mr. Connole. I think it did, Mr. Chairman. I believe the legislative history will indeed support your position."

[fol. 1397] After the Chairman of the Subcommittee, Representative Harris, had asked and Commissioner Connole had answered several questions relating to public officials who talked with and visited Commissioner Connole, this colloquy took place (p. 369):

"The Chairman. Well, I agree with your fundamental policy, as you have stated here, as to what you thought was the duty a Commissioner of a regulatory agency had, and that is, it is their duty to represent the public.

"Mr. Connole. Indeed, sir.

"The Chairman. That means the consumers, of course, throughout the various communities throughout the United States. It also means it is your duty to see that there is a healthy industry in order to serve those people because without that they could not be served and that was the purpose of the act.

"Mr. Connole. Yes, sir."

After considerable testimony relating to the various visits of Mr. Corcoran concerning the Midwestern-Tennessee gas situation, the Commissioner was asked several general questions. He testified, *inter alia* (pp. 390-391):

"Mr. Connole. Well, sir, that is of course a big question and I would not presume to tell this Committee its business.

"I appreciate your asking me under these conditions.

"Mr. Chairman and members of the committee, let me say this. With respect to this whole question of contacts and off-the-record visits, it has been my experience that with very, very rare exceptions, the practicing bar, the actual members of the bar, who work before us, seldom, if ever, trespass on the bounds of propriety or good judgment. They seem to have instinctive flair, an instinctive feeling for where good judgment starts and where it stops.

"This is no different than the daily practice they have before the courts.

[fol. 1398] "If there are any improper representations made to us, or to any regulatory commission with which I have been associated and I have been intimately associated with three of them, it comes not from the lawyers who are retained, but rather from company officials or so called what I would call administrative lobbyists, the Washington representative type. Now those men's positions also are highly understandable and purely ethical, because a businessman's point of view, it seems to me it is not quite the same as the lawyers. He is interested in getting his job done no matter what. His protection, he stands in a position of a responsibility to a group of consumers who are dependent on him for this vital utility service.

"He sees his shareholders and directors breathing down his neck. He sees himself committed to hundreds of millions of dollars of securities of somebody else's money and what can he do to get this case dislodged from the Federal Power Commission.

"I can see it is entirely natural, whether it is excusable is now another thing. But it certainly is explainable why a man in that position would come before us. I don't think that excuses him but I think it explains it. Would I say—

"Mr. Springer. It is my understanding that these contacts, which we shall call administrative lobbyists or representatives of industrial groups or of consumer groups whichever it happens to be, are very anxious to get a decision.

"But, however, most of them do not dare discuss with you the merits of the case, but they want to get a decision as quickly as possible. Is that correct?

"Mr. Connole. That is right.

"Mr. Springer. So most of their contacts with you are of the nature of say, 'When are you going to get my case decided?'

"Mr. Connole. Yes; that is precisely it. In the atmosphere, too, of this hearing room I must constantly advert to this fact; these are very, very infrequent, even the type I speak of.

"Mr. Springer. Right now, most of these people who do come in though are trying to get their case decided? [fol. 1399] "Mr. Connole. Well, most of the people who come in to see me are on perfectly legitimate business, but the handful of people who are actually in the office and have cases pending and who at any time it crosses their mind the necessity for expediency are invariably, it seems to me, very rare exceptions."

Representative Derounian resumed questioning Commissioner Connole about various individuals, one of whom was Mr. Wimberly (p. 394):

"Mr. Derounian. Did you mention before that Mr. Wimberly was or was not a social friend of yours?

"Mr. Connole. He is an acquaintance of mine; yes.

"Mr. Derounian. And you had dinner at his home from time to time?

"Mr. Connole. Not from time to time. I believe on one or two occasions I was invited with some other people. I don't believe I have ever had dinner at his home in the direct sense of the word.

"Mr. Derounian. According to the record here Mr. Wimberly called on Commissioner Kline six times in 1958, six times in 1959 and three times in 1960.

"How many times would you say he called on you?

"Mr. Connole. Call on me? You mean stuck his head in the office or something?

"Mr. Derounian. At your office?

"Mr. Connole. I don't know whether it was five or three or six. I don't know. I keep no record—certainly attach no significance to it."

The questioning continued (p. 395):

"Mr. Derounian. Well, Commissioner Connole, here we have the same people calling on you and calling on the other Commissioners. There is ample evidence here that at least a few of those same people who called on you and called on the other Commissioners [fol. 1400] were there for purposes other than to pass the time of day or talk about the weather.

"Now, do you still state that in their contacts with you—

"Mr. Connole. Mr. Derounian, everything I stated to you under oath is correct, sir, and if you want me to tell you that one of these men came to see me on a nefarious purpose or for an improper purpose I will not say it to you. They did not to my knowledge.

"And I don't think reading lists of names of people whose names I happen to have in my possession destroys the fact."

D. The Relevant Testimony of Commissioner Stueck.

Commissioner Stueck first testified with respect to matters and conversations concerning the Midwestern pipeline (pp. 398-401).

He then identified certain documents showing various visitors who were representatives of a number of different companies (p. 401):

"Mr. Lishman. Mr. Stueck, I am going to hand you two documents.

"Mr. Stueck. Would you like me to describe what these are?

"Mr. Lishman. Yes.

"Mr. Stueck. Well, it is part of a well-known legal system called a lawyer's log. When I was in private practice it was kept very carefully by the hours, so that a proper charge could be made. I have maintained it in some respects, now that I am on the Commission, and, of course, the item of keeping intricate details is not necessary. It is the system I used and I think this is what you would like me to say.

"Mr. Lishman. Yes.

"Mr. Stueck. We keep track of who comes in and who comes out. I have one of these daily tear-off sheet calendars on my desk, on which I put coming [fol. 1401] events or coming appointments. I think my secretary keeps a little, small black metal bottomed calendar pad, but the same sort of a thing, which turns over.

"Your investigators have my secretary's calendar, I think.

"Would you like me to identify them?

"Mr. Lishman. Yes. We don't need them right now, but we might have them identified by you.

"Before we leave the first two volumes that I gave you, Mr. Stueck, is it correct—

"Mr. Stueck. I will finish telling you what the system is.

"Mr. Lishman. I just wanted to be sure that the two documents of loose bound covers are your 1959 office log.

"Mr. Stueck. Yes, sir; except in this manner. I told you that I kept a daily tearsheet calendar and at the end of the day or several days I tear off those sheets and put them in my out basket or box and my secretary takes from those and puts them in this lawyer's log.

"Mr. Lishman. Is this the calendar pad that your secretary keeps?

"Mr. Stueck. I believe it is, sir.

"Mr. Lishman. That also is for the year 1959?

"Mr. Stueck. Apparently these for 1959 complete and what we have of 1960, the second one, 1960."

Based on Commissioner Stueck's office logs for the years 1959 and 1960, there was included in the record (p. 402) a 36-page mimeographed document (six and one-half small type printed pages, pp. 481-487) prepared by the Subcommittee's staff entitled "Persons and Dates Recorded in the Office Log of Commissioner Stueck Compared with Actions Taken by the Federal Power Commission." This compilation and comparison shows the names of numerous representatives of numerous companies and action by the Commission with respect to such companies soon after a [fol. 1402] particular visit. It has only two references to Pacific (pp. 483, 487).[1]

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[1] "April 20, 1959: Harrington Wimberly, Washington representative of Pacific Northwest Pipeline Corp., formerly a subsidiary of El Paso Natural Gas Co. and since January 1960 merged with El Paso (FPC permission for merger given by order of December 22, 1959).

"On April 21, (4) G-12792 and G-15105, Pacific Northwest Pipeline Corp. (letter granting extension of time to file statements).

"On April 22, (23) G-17257, El Paso Natural Gas Co. (findings and order issuing certificate of public convenience and necessity); (24) G-17395, El Paso findings and order issuing certificate of public convenience and necessity); (26) G-17769, Pacific Northwest Pipeline Corp. (findings and order issuing certificate of public convenience and necessity); (30) G-10911 and G-11093, Pacific Northwest (orders amending orders by extending time within which to file cost statements).

"On April 24, (11) letter to Pacific Northwest accepting for filing a service agreement.

"On April 29, (16) G-15482, El Paso (findings and order issuing certificate of public convenience and necessity).

"On May 13, (9) G-17018, Pacific Northwest (findings and order issuing certificate of public convenience and necessity).

"On May 14, (2) G-17399, El Paso (letter granting temporary authorization)."

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"January 1, 1960: Harrington Wimberly, Washington representative for Pacific Northwest Pipeline Corp. (now El Paso Natural Gas Co.).

"Press release, January 5, 1960: FPC authorized pipeline construction by El Paso and sales of gas by Phillips Petroleum to El Paso."

Based on Commissioner Stueck's office logs, an alphabetical compilation entitled "Persons in Contact with Commissioner Stueck" [during 1959 and 1960] also was included in the record at pages 502-511. Before this compilation was included in the record, the following colloquy took place between Representative Derounian and Representative Harris, Chairman of the Subcommittee (p. 481[2]):

> "Mr. Derounian. Mr. Chairman, may I just point out, reserving the right to object, there are some notations here, in fact you find quite a few that have nothing to do with any Federal matter before the Commission. There is a Member of Congress listed here, and the inference would be that he had contacted the Commissioner on some Federal power matter when, in fact, they have been personal friends 34 years; he is his own Congressman.
>
> [fol. 1403] "So subject to that caution, to everybody concerned, the mere fact that you are mentioned in here does not mean that you had some contact with the Commissioner on Federal power matters. That is the danger in this type of an insertion.
>
> "The Chairman. Well, of course, that very point was so well brought out this morning in relation to another gentleman who has been a personal friend of the Commissioner for 35 years, and the same situation existed with reference to that party to which the gentleman has just referred.
>
> "I agree with him that there should not be any implication at all."

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[2] The alphabetical compilation was included in the printed transcript at pages 502-511 by error instead of at page 401, *et seq.*, as is shown by the colloquy at pages 480-481.

More than 100 names appeared in this alphabetical compilation (pp. 502-511). The only one named employed by Pacific or El Paso was Mr. Wimberly (p. 511).[1]

Counsel for the Subcommittee then questioned Commissioner Stueck about the persons named in chronological order and the Commission's decisions which followed shortly after meetings with the particular individual, as shown on the summary entitled "Persons and Dates Recorded in the Office Log of Commissioner Stueck compared with Actions Taken by the Federal Power Commission" (pp. 403-416). The name of Mr. Harrington Wimberly was reached (pp. 416-417):

> [fol. 1404] "Mr. Lishman. Turning to page 11, is it correct that on April 20, 1959, you had a visit with Mr. Harrington Wimberly?
>
> "Mr. Stueck. Yes, sir.

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[1]	Year	Occasion	Others Present	Place	Date	Time
Wimberly, Harrington, eastern division manager, Pacific Northwest Pipeline Corp., 1001 Connecticut Ave. NW., Washington, D. C.	1959	do [conference]		do [Mr. Stueck's office]	Apr. 20	11 a.m.
	1959	Christmas dinner		Mr. Wimberly's home	Dec. 25	4 p.m.
	1960	Breakfast	Mr. and Mrs. Sam Clammer	do	Jan. 1	11 a.m.
	1960	Engagement announcement party for Mr. and Mrs. Wimberly's daughter, Mary Margaret.		do	Feb. 13	

"Mr. Lishman. Will—is Mr. Wimberly a former Commissioner?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. Is it correct that at one time he represented Pacific Northwest Pipeline?

"Mr. Stueck. Yes, sir; I think he still does.

"Mr. Lishman. Which was merged into El Paso?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. Is it correct that at on or about April 20 there were matters pending before the Commission pertaining to the Pacific Northwest Pipeline Co.?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. And also pertaining to El Paso?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. And some of those matters are—what you would call in the adjudicatory status?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. And some of these matters are correctly set forth on page 11?

"Mr. Stueck. The minute entries reflected on that page, I have checked, and they are correct.

"Mr. Lishman. Now, when Mr. Wimberly called on you on April 20, did you discuss any of these matters with him?

"Mr. Stueck. *No, sir; I have never discussed any litigated matter with Mr. Wimberly.*

"Mr. Lishman. Do you recall what you did discuss with him?

"Mr. Stueck. Mr. Wimberly comes in to pay a social call more or less. Frequently, he may have a new story to tell. Occasionally, the need for expedition, or the need for handling of matters, because of drainage of gas wells, for instance, or something like that, may be mentioned but he has never discussed any litigated pending case.

"Mr. Lishman. Well, is it correct that Mr. Wimberly is not an attorney?

"Mr. Stueck. He is not an attorney. He is a newspaperman, I think.

[fol. 1405] "Mr. Lishman. In other words, would you consider him to be acting more or less as a public relations man?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. For a Pacific Northwest and El Paso?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. Would the kind of discussions you have with him been in that area rather than in the area of adjudicated matters?

"Mr. Stueck. Yes, sir."

The questioning continued, taking up various persons in chronological order (pp. 417-427) based on the summary, when in connection with the one other entry relating to El Paso or Pacific, counsel for the Subcommittee resumed questioning concerning Mr. Wimberly (pp. 427-428):

"Mr. Lishman. Toward the end of December 1959, did you attend a dinner party given by Mr. Wimberly?

"Mr. Stueck. It has been said December. My recollection is that the evening gathering at Mr. Wimberly's home to announce the coming marriage of his daughter was on the 13th or 14th of February. It was around Valentine's Day.

"Mr. Lishman. Were all the Commissioners present?

"Mr. Stueck. I cannot say for sure, sir.

"Mr. Lishman. Did you have a New Years party on January 1, 1960?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. At which Mr. Wimberly was a guest?

"Mr. Stueck. It was not New Year's Day party. My wife makes very excellent French pancakes and that was talked about at some social gathering where we were. We invited the Wimberlys and the Clammers to come over at noontime to my house to have a breakfast and lunch of French pancakes.

"Mr. Lishman. Is it correct that at or about that time the Commission had authorized the pipeline construction by El Paso?

[fol. 1406] "Mr. Stueck. I think the authorization was—

"Mr. Lishman. January 5, 1960, according to the press release.

"Mr. Stueck. Well, El Paso is always constructing and I don't know just what construction that might be. We did not discuss any Commission business at that lunch."

Counsel for the Subcommittee then turned to the El Paso-Pacific merger case (pp. 428-433):

"Mr. Lishman. Have you ever discussed any Commission business outside of the office with any representative of the companies subject to regulation?

"Mr. Stueck. I cannot recall that I did.

"Mr. Lishman. Is it correct that on or about December 23, 1959, the Commission approved the merger of El Paso and Pacific Northwest?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. And did you participate in that decision?

"Mr. Stueck. Yes, sir. I voted for the merger because I thought it was in the public interest to do it, and I would recite my reasons if you would care to have them.

"Mr. Lishman. Did you have Christmas dinner with Mr. Wimberly?

"Mr. Stueck. We went to his house during the holidays. I am not just sure whether it was Christmas Day or not. It was not a Christmas dinner, it was an open house. I think we did go over there on Christmas Day.

"Mr. Lishman. You did. Who else was present, do you recall?

"Mr. Stueck. I believe that there were, Mr. Wimberly has two daughters, I believe both daughters were present. I think the younger daughter is a nurse at Johns Hopkins in Baltimore and I think she brought some friends down with her.

"Mr. Lishman. Were there any other members of the Federal Power Commission present?

[fol. 1407] "Mr. Stueck. I don't believe there were.

"Mr. Lishman. You recall that on July 22, 1957, the Department of Justice filed a complaint against El Paso and Pacific Northwest?

"Mr. Stueck. Yes, sir.

"Mr. Lishman. Under section 7 of the Clayton Act. Is it your understanding that the Department of Justice protested or objected to the Federal Power Commission approving the merger?

"Mr. Stueck. Yes, sir, they wanted us—they didn't object to the approval of the merger but they wanted us to wait until they had concluded their case. We invited them to participate in the hearings where they could have stated objections but they did not do that.

"Mr. Springer. By what authority does any other agency of Government request you to hold up a decision in a matter?

"Is there any law that allows them to do that?

"Mr. Stueck. I don't know that there is any law on that subject. We frequently invite other departments of Government to participate in hearings. For example, on many hydroelectric developments the Department of Interior and the Department of the Army do participate. I think that had we just acquiesced in the request of the Department of Justice we would have been criticized and said we were not truly an independent Commission, but that we were under the direction of the executive branch of the Government, to wit, the Justice Department.

"Mr. Springer. Isn't intervention by some other agency of the Government just as much an attempt to influence you as, say, some constituent who comes into the office?

"Mr. Stueck. Yes.

"Mr. Springer. I just wondered under what authority the Attorney General would act in such a case. If he was invited by you that is a different thing, but to merely ask you to hold up a decision in your jurisdiction—

[fol. 1408] "Mr. Stueck. Particularly in view of the fact that it is well known in legal circles that these anti-

trust proceedings drag on for years and years and years.

"Mr. Springer. Thank you, Mr. Chairman.

"The Chairman. Well, I think it is already in the record, but in view of the question, I think it should be referred to again that section 7 of the act provides authority to your agency as well as to other agencies to proceed in matters even though the Department of Justice has brought proceedings, antitrust proceedings.

"Mr. Stueck. Yes, sir. The course which the Commission has followed—

"The Chairman. What is it, Mr. Lishman?

"Mr. Lishman. The 1950 amendment to section 7 of the Clayton Act.

"Mr. Springer. What does that section say?

"Mr. Lishman. It has been read into the record.

"Mr. Stueck. The press release which the Department of Justice issued at the time they filed that suit said that now the great West is free and open to competition. Well, there is nothing that is going to raise the price of gas more than having a lot of companies trying to buy it from the producers.

"A pipeline company is a natural monopoly, and that is why it is a regulated public utility operating under a limited rate of return and under the jurisdiction of a regulatory body, under an arm of this Congress.

"The Chairman. The amendment to the Clayton Act December 29, 1950, provides, and I quote:

> 'Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission and in the exercise of its jurisdiction under section 10 of the Public Utility Holding Company Act of 1935, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting [fol. 1409] such power in such commission, secretary, or board.'

"The problem that has arisen here is that the Department of Justice had filed an antitrust proceeding before a petition was filed with your Commission, is that not true, Commissioner Stueck?

"Mr. Stueck. I am sorry, I am confused for the moment as to which proceeding started first. I believe that the antitrust suit was filed before the El Paso Co., which had already acquired the stock of Pacific Northern [Northwest], with the knowledge of the Secretaries [*sic*] and Exchange Commission. They told us what they were doing, and it was our legal counsel's opinion we had no jurisdiction over the matter. They had acquired just about all of the stock of Pacific Northwest.

"The Chairman. I think that is a pretty important point for the consideration of this problem here at this meeting, because the inference easily, I will say to my colleague, is that the Department of Justice had filed its antitrust proceedings, subsequently thereto an application was filed before the Federal Power Commission asking for approval of the merger.

"Then the question arose if the Federal Power Commission permitted the merger that would adversely affect the Department of Justice proceedings it had before the Federal Court, and there is where the issue lay. I don't suppose it is our duty to resolve it, because obviously under the law the Department of Justice has authority to proceed with its proceedings before the court.

"Under the law the Federal Power Commission was not bound by those proceedings and it is stated, and if there is a conflict in the law regarding this problem, why it is the duty of the Congress to resolve that. So far as I know we have never been asked by either the Federal Power Commission or the Department of Justice to in any way amend or modify this provision.

"Mr. Stueck. I think the thought is also apropos at this time, that the Justice Department's suit was pend-[fol. 1410] ing for nearly a year before the Federal Power Commission acted.

"The Chairman. Eight Years?

"Mr. Stueck. A year, 1 year.

"The Chairman. You mean this one?

"Mr. Stueck. The antitrust suit was pending—wasn't it?

"Mr. Lishman. I would like to clarify the record when the time comes.

"Mr. Stueck. I understood it had been pending.

"Mr. Lishman. I would like to clarify the record on that point when the occasion arises.

"Mr. Stueck. It was pending for a considerable time.

"Mr. Springer. Can you do it now?

"Mr. Lishman. Yes, sir. According to the records we have the Federal suit was filed July 22, 1957, in the U. S. District Court for Utah, application was made to the Commission for merger approval on August 7, 1957. I wish to say further from the record it appears that there are two routes which may be applied in consummating mergers.

"One is by acquisition of stock. The other is by transfer of assets.

"The suit that was brought by the Department of Justice, as I understand it, and I have the complaint before me, under section 7 of the Clayton Act, pertains to the acquisition-of-stock rule. This was the route originally proposed by this company to accomplish the merger.

"Vigorous objection was made to this entire merger by the State of California, and the company then, when it saw that it might be getting into heavy weather, according to the way I interpret the situation from the record, decided that it would change the manner in which it would accomplish the merger from one of acquisition of stock to one of transfer of assets, and it was the transfer-of-assets merger route which was followed by that company before the Commission.

"So you have, in my opinion, the anomalous situation of a company proceeding one way, and becoming [fol. 1411] subjected to a Clayton Act complaint, and after it has gotten in trouble in that direction, switching over to a different route which is authorized by law, and appealing to the Commission to help them con-

summate the merger in another manner. I think, without making any great to-do about it, this is an area which falls squarely within one of the purposes of this subcommittee, to establish the overlapping of jurisdiction, the overlapping of law, and whether it is in the public interest to have this situation exist.

"Mr. Springer. I have no further comment. I am glad you did clarify that, and I see your point.

"The only question I have raised at this point is by what authority did the Attorney General ask the Commission to stay its proceedings. Because, it looks to me as if this is intervention just the same as if you approach someone about the merits of a case.

"Representations might be made legally, that is a different thing, but I think it is exertion of pressure on the Commission not to act when in fact it might be their duty to act.

"I don't say they did or did not. I am not going to enter into that. I am just going to say I doubt if that is the kind of thing that ought to be done.

"Mr. Lishman. Mr. Chairman, in effect, the Federal Power Commission was exerting pressure the other way. They were putting the pressure on the Department of Justice to impede the exercise of its jurisdiction in the matter.

"Mr. Springer. Didn't they do that legally though? Didn't they appear in court before a judge?

"Mr. Stueck. Yes, sir.

"Mr. Springer. They didn't do that by some ex parte proceeding, I suppose, of writing the Commission a letter and asking to stay the proceedings?

"Mr. Stueck. May I clarify that point?

"Mr. Springer. I would be happy for you to if you could.

"Mr. Stueck. The action that the Commission took was to write to the judge in whose court this antitrust [fol. 1412] proceeding had been filed and say to him, 'We will defer to your wishes. If you desire to proceed with the trial of the case before you, we will wait. If you do not desire to proceed, we will proceed, be-

cause we had a large stake in protecting the public interest.' The Pacific Northwest was losing money and losing money badly as I understand it, so that a tax saving could be affected by the merger. I once saw the figure of $9 million, if the merger were consummated before the end of the tax year. And that was the reason why the Commission thought it had to move.

"Mr. Springer. Your point is that you did it entirely in a court of law before a judge?

"Mr. Stueck. Yes, sir.

"Mr. Springer. You didn't make any representations to the Attorney General's office ex parte, did you?

"Mr. Stueck. No, sir.

"Mr. Springer. In other words what you did was entirely a legal matter before the judge where everyone could be heard on it?

"Mr. Stueck. That is right.

"Mr. Springer. Thank you.

"Mr. Stueck. In this case.

"Mr. Springer. What was the decision of the judge? Did he oppose you or not oppose you?

"Mr. Stueck. The judge directed us to go ahead with the trial of our case.

"Mr. Springer. Thank you, Mr. Chairman.

"Mr. Lishman. I think the record ought to speak to that because I am not sure that is quite an accurate summarization of what the judge said with all due respect. We have the record here.

"Mr. Stueck. I think it was all done by letter so it is all in writing.

"The Chairman. Well, I am wondering if the inference should be left here that the Department of Justice by ex parte proceedings did intervene. It would seem to me that from what the record has shown here that the Department of Justice wrote a letter to the Commission which become a part of your record, didn't it?

[fol. 1413] "Mr. Stueck. Yes, sir.

"Mr. Springer. That is the point I meant to make, Mr. Chairman.

"The Chairman. That is entirely different in saying it is the same type of ex parte proceeding where somebody comes in and talks to you about the merits of a case off the record. I don't want to get into any argument as to—between the Department of Justice and the Federal Power Commission. They both have got their own responsibilities but I don't want any inference left here that the Department did not have the duty to advise this Commission of its own responsibility, and I agree that the Commission's approach to the Federal court was the proper one to find out what the status was there.

"Now, I think properly, since the record has been carried this far, it should also probably show there weren't there many, several, at least of the State commissions in the Northwest who came to the Commission and urged this proceeding be approved?

"Mr. Springer. My recollection, subject to the record itself, is that all of the State commissions, except California, were strongly in favor of the merger.

"Mr. Moss. Mr. Chairman, at that point, I would like to have the record reflect the fact that California had by far the greater interest.

"Mr. Lishman. Is it correct that about 60 percent of the consumers involved were in the State of California?

"Mr. Stueck. I would not be equipped to give you an answer to that. Of course, a lot of the Pacific Northwest territory was undeveloped so far as consumers were concerned. If we take numbers of people, why that probably would be correct.

"The Chairman. Well, the point is did these commissions, including California, and the others in that part of the country out there, did they make their wishes known to you by petitions or letters or just how did they approach it?

"Mr. Stueck. Well, they all appeared as intervenors in the case.

[fol. 1414] "The Chairman. They appeared as intervenors in the case and became a part of the case.

"Mr. Stueck. Yes.

"The Chairman. That is all right.

"Mr. Springer. Was the Department of Justice an intervenor?

"Mr. Stueck. No, sir.

"Mr. Springer. That is what I want to know. I think if you are an intervenor you are in a legal position, but the point I am trying to bring out is at no point was the Department of Justice in that status, but merely wrote you a letter to stay the proceeding.

"If this did happen and I'm not saying it did, in my estimation it is improper for pressure to be brought on an independent agency by another area of Government.

"Mr. Lishman. Mr. Chairman, I think the record should be supplied with a memorandum of law showing the extent to which that amendment to the Clayton Act of 1950 did permit the Federal Power Commission to oust or impede the exercise of the admitted authority of the Department of Justice under the Clayton Act.

"I am informed and I have not had the opportunity yet of thoroughly briefing the matter that the statute is not at all clear that it does give the Federal Power Commission that authority to oust the Department of Justice from jurisdiction already asserted, and I would be very surprised if the statute and its legislative history ever conferred such authority upon the Commission with respect to a pending matter where the Department of Justice has already exercised its jurisdiction.

"I will be extremely astonished if that is the state of the law.

"The Chairman. Well, of course, the Congress enacted this particular section of the law and it speaks for itself. I don't know that it is our duty to question—

"Mr. Lishman. I believe—

"The Chairman. To question what the Congress did. [fol. 1415] "Mr. Lishman. If you will read the language and note the legislative history of that act I think it was intended to speak prospectively and not

retroactively and already ousts jurisdiction of the Department of Justice, I may be wrong on that but I have discussed that—

"The Chairman. The record is very clear as to what the facts are and of course the language speaks for itself.

"Mr. Flynt. Mr. Chairman?

"The Chairman. Mr. Flynt?

"Mr. Flynt. Mr. Chairman, I ask unanimous consent that the appropriate section of the act be included at this point.

"The Chairman. We have just read it in.

"Mr. Moss. Mr. Chairman, you have a suggestion of a memorandum of law. I would like to receive such a memorandum of law as part of the record.

"And I ask that such, I ask unanimous consent that such a memorandum be drawn by the staff.

"The Chairman. Is there objection?

"The Chair hears none. At such time as the staff can get to it that will be provided."[1]

The discussion relating to the El Paso-Merger case continued (p. 446):

"Mr. Springer. Mr. Chairman, may I offer this observation which I think is pertinent? This matter, as I understand it, is now on appeal by the State of

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[1] The memorandum of law thereafter supplied by Hugh J. Keenan, Jr., research assistant, American Public Law, of The Library of Congress, Legislative Reference Service, and included in the record at pages 434-446, stated, among other things (p. 444):

"(3) *Utility mergers, the Federal Power Commission, and the antitrust jurisdiction of the Justice Department in regard to such mergers.*—The following question has been asked:

'An antimerger suit is begun by the Justice Department against two utility companies. Shortly thereafter the FPC entertains an application by the defendants for approval of the mergers and proceeds to grant such approval. Can the Justice Department later resume prosecution of its antimerger suit?'

"This question has already been answered in (1) above in the negative."

[fol. 1416] California and ultimately will be decided by the Supreme Court one way or another. Am I correct on that, Mr. Lishman?

"Mr. Lishman. That is my understanding.

"Mr. Springer. So I think we will get construction of that by the Supreme Court when this matter is finally disposed of.

"The Chairman. I doubt very seriously if the issue we are discussing here becomes part of that case on appeal.

"Mr. Springer. I think, Mr. Chairman, the issue is whether or not the Federal Power Commission can, as Mr. Lishman has said, oust the Department of Justice after a case has already been filed by the Department of Justice. I think that is the point they are making, isn't that correct?

"Mr. Lishman. That is the issue.

"The Chairman. Maybe we will get the issue settled then when we get the decision of the Court. Maybe that will be your memorandum of law.

"Mr. Moss. I would like to have both of them.

"The Chairman. All right.

"Well, since that is not settled, suppose we move on.

"Mr. Lishman. I would like to get the Commissioner's views generally as to whether he thinks it is sound regulatory practice where there is a situation of overlapping jurisdiction and the Department of Justice has asserted its authority to act, that the Commission should step in and either impede or oust the Department of Justice from the exercise of that jurisdiction.

"Mr. Stueck. My answer to that question, Mr. Lishman, is that we are an arm of your Congress, this Congress, acting independently of every department of Government. We must exert our best judgment and proceed with our cases expeditiously as possible, and in this situation, there was no attempt to oust anybody from jurisdiction. We had a deadline at the end of the tax year or millions of dollars would be lost to the customers. You will recall that in the order approving

[fol. 1417] the merger, those tax savings were isolated and directed to be funneled to the consumers."

Subsequently, the questioning returned to Commissioner Stueck's visitors, including Mr. Wimberly (pp. 455-456):

"Mr. Mack. I want to be sure I understood your testimony. You indicated that many of these people were just social acquaintances who came into your office to pass the time of day.

"Mr. Stueck. Yes, sir; and I have many—

"Mr. Mack. They ask about your wife and how things were going, and so forth.

"Mr. Stueck. And I have many, many other visitors at my home and at my office who have nothing to do with the gas business and visits of the fellows who pay the gas bills.

"Mr. Mack. Of course, most of the people calling at your office would be calling for business purposes.

"Mr. Stueck. Yes, I think the major programs. But there are many people who come here from my home State, home city of St. Louis, who have nothing to do with the gas business who drop in and visit, and to say 'How do you do?'

"Mr. Mack. Now if you have all of these people who are social acquaintances who are interested in or employed by people who—concerns being regulated, isn't it difficult to keep from relating to the cases pending?

"Mr. Stueck. I do not find it difficult to do so. Social obligations are one thing. Deciding cases is an entirely different activity.

"Mr. Mack. I notice in the case of Mr. Wimberly—was it?

"Mr. Stueck. Yes, sir.

"Mr. Mack. He seemed to be very active in the gas circle, power circles. And yet he is also a very close personal friend.

"Mr. Stueck. I wouldn't say he is a close personal friend. He is a friend. I have visited in his home—

"Mr. Mack. He is close enough so that you have dinner with him on Christmas Day.

[fol. 1418] "Mr. Stueck. Well, on this particular Christmas Day. That is not a regular occurrence. The one and only time it has happened.

"Mr. Mack. Well, this matter was just called to my attention this morning.

"Mr. Stueck. Yes.

"Mr. Mack. But I raise that question that he must have been a right close friend of yours.

"You testified before the committee that he never refers in any way to any of the cases pending before you.

"Mr. Stueck. That is right, on the merits of the case. Occasionally, he has come in—

"Mr. Mack. Now, socially he would refer to the status of the case, isn't that right?

"Mr. Stueck. When we are out at a social affair, I have never—I have no recollection of his ever mentioning any cases pending before the Commission. He does come in to the office occasionally, in which usually a matter of expediting, getting cases going would be mentioned.

"Mr. Mack. In other words, if he is interested in the status of the case, he would inquire about at your office rather than at his home or your home?

"Mr. Stueck. Yes, sir.

"Mr. Mack. Or some place in town?

"Mr. Stueck. Yes, sir, that is right.

"Mr. Mack. Now, do you have other people besides these ones referred to today who inquire about the status of the cases?

"Mr. Stueck. I think—do you mean any people other than those already named?

"Mr. Mack. Yes, I do. Mayors of communities, Members of Congress?

"Mr. Stueck. Members of Congress, yes sir. . . . "

Based on the document entitled "Persons and Dates Recorded in the Office Log of Commissioner Stueck Compared with Actions Taken by the Federal Power Commission" (pp. 481-487), Commissioner Stueck was questioned

[fol. 1419] extensively concerning the various other company representatives included in this list about which there has been no prior questioning (pp. 457-495).[1]

There was no further questioning or testimony of Commissioner Stueck or of any of the members of the Federal Power Commission.

Submitted by
Intervenor El Paso Natural Gas Company

[fols. 1420-1421]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15687

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

MEMORANDUM SETTING FORTH RELEVANT PORTIONS OF THE TRANSCRIPT OF HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, EIGHTY-SIXTH CONGRESS, SECOND SESSION (HARRIS COMMITTEE)—Filed February 1, 1961

Pursuant to permission granted herein by the Court at oral argument, California sets forth those excerpts from the proceedings conducted before the Subcommittee on Legislative Oversight as they relate to the conduct and

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[1] The only further reference to any El Paso or Pacific representative, was as follows:

"Mr. Moss. We have had Mr. Wimberly discussed . . ." (p. 494).

activities of representatives of applicants and certain Federal Power Commissioners.

I.

Excerpts from the Testimony of Arthur Kline, Vice Chairman, Federal Power Commission, Given May 13, 1960

Pages 197 to 200:

"Mr. Lishman. Mr. Kline, will you please turn to page 23 of the document we gave you? Do you know a Mr. H. Wimberly?

Mr. Kline. Yes, very well.

Mr. Lishman. Would you please identify him?

Mr. Kline. Mr. Wimberly is a former Commissioner on the Federal Power Commission. He now represents, or he did represent, the Pacific Northwest Pipe Line Corp. prior to the time it was merged with El Paso.

Mr. Lishman. Is it correct that you had a number of visits from Mr. Wimberly?

Mr. Kline. That is true.

[fol. 1422] Mr. Lishman. Is it correct that Mr. Wimberly as of today represents El Paso Natural Gas Co.?

Mr. Kline. I believe so. I am not positive.

Mr. Lishman. Well, now, in 1958 on July 2, did Mr. Wimberly call on you?

Mr. Kline. Yes.

Mr. Lishman. You don't recall what he discussed at that meeting? Do you?

Mr. Kline. Well, Mr. Wimberly and I had played golf together, he is one of the few people I play golf with, and it was very possible being just before the weekend of July 4, that at 4:45 he came in to ask if I was busy over the 4th and if we might not play golf. I have no recollection at all of the conversation.

Mr. Lishman. Well, you understand, Mr. Kline, we have been charged with the mission of ascertaining the extent of ex parte contacts.

Mr. Kline. I understand.

Mr. Lishman. And we are not making any accusations. We are just pursuing our—

Mr. Kline. I understand that and I am sorry that my recollection of these is not better but you can understand—

Mr. Lishman. I hope you will understand that I don't mean by any of my questions to infer anything improper, but rather an attempt to ascertain the number of visits and the significance of the visits.

Mr. Kline. I will have to take back my last statement. I didn't begin playing golf until 1959, so that on July 2, 1958, it must have been for some other purpose that he called on me.

Mr. Lishman. Yes, sir, but you don't recall.

Mr. Kline. I have no recollection.

Mr. Lishman. Now on July 9, 1958, he called, is that correct?

Mr. Kline. Yes, I see no reason why I should check this book further. I am certain your list is correct and I will just assume that it is correct, and state that he did call on that date.

Mr. Lishman. You don't recall what he discussed on that day?

Mr. Kline. Well, I see that later in the afternoon Mr. Hiatt was in. Mr. Hiatt was a representative from Salt Lake City, an official of the Pacific Northwest Pipe Line Co., and he might have dropped in to ask me if I would be able to see Mr. Hiatt later in the afternoon.

Mr. Lishman. Do you recall whether you did see Mr. Wimberly and Mr. Hiatt in the afternoon of that day, July 9?

Mr. Kline. My secretary's notebook so shows.

Mr. Lishman. Do you recall what you discussed?

Mr. Kline. No; I don't recall. I will say this: In the last week of June, in 1958, I attended a meeting of the Interstate Oil Compact Commission in Salt Lake City and Mr. Hiatt at that time had asked us to take a little trip in Salt Lake City. I had been unable [fol. 1423] to go on it, and I believe that when he was in Washington he dropped in to express regret that I had not been able to take the automobile trip around Salt Lake City.

Mr. Lishman. On September 11, 1958, Mr. Wimberly called at your office.

Mr. Kline. That is correct.

Mr. Lishman. Do you recall what you discussed with him at that time?

Mr. Kline. No; I don't recall. I might, by going back through our files and seeing what matters Pacific Northwest had. If I might, I might be able to see just what I did discuss with him. Pacific Northwest had pending at that time a rate increase which had gone into effect February 5, 1958, and Pacific Northwest also had applications before us at different times for expansion of its lines.

Mr. Lishman. Now, on November 14, 1959, did Mr. Wimberly call on you again?

Mr. Kline. That is correct.

Mr. Lishman. Do you recall what he discussed at that meeting?

Mr. Kline. No; I do not. I might say as far as Mr. Wimberly is concerned, I don't believe that he ever discussed any business matter with me except on two or three occasions. Now that is not true of some of these other representatives who never came in except on business.

But in his case, I don't think he ever, except on two or three occasions, did discuss business matters. He just came in to visit.

Mr. Lishman. Now turning to 1959, February 2, did Mr. Wimberly call on you, and do you recall what he discussed at that time?

Mr. Kline. No; I am sorry, I do not.

Mr. Lishman. On April 3, 1959, he called again.

Mr. Kline. I guess from seeing just that date on a piece of paper, I cannot recall at all.

Mr. Lishman. There is a press release of the Power Commission in April 1959 stating that the Commission had authorized El Paso to construct some facilities. Do you recall whether or not on the February 2 visit Mr. Wimberly discussed that matter with you?

Mr. Kline. No; I am certain he did not, because at that time El Paso and Pacific Northwest were not

merged, and I don't recall him having discussed any El Paso matter with me.

Mr. Lishman. On April 3, Mr. Wimberly called on you again. Do you recall what he discussed then?

Mr. Kline. No; I do not.

Mr. Lishman. Again on April 20?

Mr. Kline. I do not recall what was discussed.

Mr. Lishman. Again on May 29.

Mr. Kline. I have no recollection then as to what was discussed.

Mr. Lishman. Again on October 21. Do you recall what was discussed at that meeting?

Mr. Kline. No; I have no recollection, unless my memory might be refreshed through some press release or something of that nature.

[fol. 1424] Mr. Lishman. Well, during this time weren't active merger negotiations going on between El Paso Natural Gas Co. and Pacific Northwest Pipe Line Corp.?

Mr. Kline. That is true.

Mr. Lishman. Wasn't there discussion of an antitrust suit being brought by the Department of Justice?

Mr. Kline. That is true during all of this period, but I do not believe Mr. Wimberly ever discussed any phase of that case with me at any time. He has never at any time approached me improperly and I don't believe he ever discussed a case while it was pending in any manner with me.

Mr. Lishman. On November 9, 1959, Mr. Wimberly called on you again.

Mr. Kline. That is correct.

Mr. Lishman. Do you recall what was discussed at that time?

Mr. Kline. No; I do not.

Mr. Lishman. Is it correct that on December 23, 1959, the merger of El Paso and Pacific Northwest Pipe Line Corp. was approved by the Commission?

Mr. Kline. I believe that was the date. It was just before Christmas.

Mr. Lishman. Was that a unanimous decision?

Mr. Kline. Yes. I am not sure that Mr. Hussey participated but it was unanimous upon the part of those who participated."

Page 202:

"Mr. Lishman. Now coming to 1960, Mr. Kline, do you recall that on January 15, Mr. Wimberly called on you?

Mr. Kline. Yes; I believe my secretary's books so show.

Mr. Lishman. Do you recall what he discussed at that time?

Mr. Kline. No; I cannot recall.

Mr. Lishman. Well, Mr. Wimberly also called on you on February 3, 1960; is that correct?

Mr. Kline. That is correct.

Mr. Lishman. Do you recall what you discussed with him at that time?

Mr. Kline. No; I do not recall; I am sorry.

Mr. Lishman. And again, he called on you February 18, 1960, is that correct?

Mr. Kline. That is correct, and I have no recollection of what he called at that time about. It is possible that by going back to the books and the different matters we had before us of those various meetings I might refresh my memory and recall, but just given those dates at this time, I am unable to recall what he saw me about."

Pages 204-205:

"Mr. Lishman. Mr. Kline, I would like to ask this question. Would the fact that Mr. Wimberly as a former member of the Commission, and he was apparently one of your friends, in any way have tipped the scales in favor of the El Paso decision in this particular matter?

[fol. 1425] Mr. Kline. Absolutely not. I might say this further: Mr. Wimberly represents another company before us. They recently had an application for temporary authority to construct a $43 million exten-

sion of their pipeline system. The other three Commissioners had approved that. I said I disagreed and I filed a dissent, and the other three Commissioners came around to my view.

That was on temporary authority and the basis of my belief was that we should not grant temporary authority for that large a project, but I think that will illustrate that Mr. Wimberly has no influence on me at all.

Mr. Lishman. What were those other companies that Mr. Wimberly represented?

Mr. Kline. Well, they are the American Natural System. Now I don't know which particular ones he represents, whether it is American Louisiana, Michigan Wisconsin or the entire system.

Mr. Lishman. Did you go to the funeral of former Commissioner Hussey?

Mr. Kline. That is true.

Mr. Lishman. Was Mr. Wimberly on the plane?

Mr. Kline. Yes, that is correct.

Mr. Lishman. On the occasion of going to the funeral of Mr. Digby, did you go on the company plane, too?

Mr. Kline. I did not.

Mr. Lishman. Do you play golf very often with Mr. Wimberly?

Mr. Kline. I would say that I haven't played golf over 20 times in the last 20 years or since World War II, but most of the time I have played, I have played with Mr. Wimberly.

Mr. Lishman. Was it in 1959 that you started playing golf with him?

Mr. Kline. That is correct. I played golf at FPC golf parties, we have golf parties twice a year and I played with him at one or two of those and then I started in, in 1959.

Mr. Lishman. Do you see him at lunches and dinners?

Mr. Kline. I don't ever recall having seen him at lunch. I have been to one or two dinners with him.

Mr. Lishman. Do you recall having dinner with him toward the end of December, in 1959, with another Commissioner?

Mr. Kline. Well, Mr. Wimberly and I went to the Interstate Oil Compact Commission meeting in Philadelphia, and on our return his wife and my wife had dinner together on one occasion.

Then his daughter is getting married and they had a party at their house, I believe it was about that time, and I went over to that party at his house.

Mr. Lishman. Would that be around Christmas time, or shortly thereafter in 1959?

Mr. Kline. I think so.

Mr. Lishman. Were you there Christmas day at his house?

Mr. Kline. No, sir; I was not.

[fol. 1426] Mr. Lishman. Was another Commissioner present at this dinner?

Mr. Kline. I am not certain but what several of the Commissioners were probably there.

Mr. Lishman. And shortly after, there was the approval of the El Paso-Pacific Northwest Pipe Line merger?

Mr. Kline. Yes.

Now I don't recall the exact date—

Mr. Lishman. Could it be described as a kind of victory celebration?

Mr. Kline. No; absolutely not. This was a party for his daughter who was getting married. There were perhaps 40 or 50 couples there. It was a buffet dinner given there by him for his friends.

Page 209:

"Mr. Kline. Well, I played golf once this year, I seem to be quite a golfer and yet I hardly ever play. I played once this year, and that was with Mr. Clammer and Mr. Wimberly and I am sure one of those he just stopped in for a golf date.

On the other occasions they were doubtless about business. He represents a pipeline which transports from Texas to Florida, and it currently has underway an expansion program. Now there has been a dispute as to whether certain people should be allowed to in-

tervene in that case, and it seems to me that he may have been in to discuss matters, procedural matters in connection with that case. I do not ever recall having him discuss in any way any pipeline case with me, discuss the merits of any pipeline case with me or of any case whatsoever.

Mr. Lishman. Now, Mr. Kline, will you turn to page 10, please, of that document? Do you know a Mr. Paul Kayser?

Mr. Kline. That is true.

Mr. Lishman. Will you please identify him for the record?

Mr. Kline. He is president of the El Paso Natural Gas Co.

Mr. Lishman. Is it correct he made some calls in your office, one in 1958 and four in 1959?

Mr. Kline. Yes, that is true.

Mr. Lishman. Do you recall what was discussed at any of these meetings?

Mr. Kline. Now, El Paso Natural Gas Co. probably has 50 to 100 matters pending before us at all times. Generally when, or sometimes when, Mr. Kayser is in town testifying in a case that is going on before an examiner he just drops in for 2 or 3 minutes to say hello, and I think that is all that ever happened on any of these occasions.

I have never had an extended conversation with Mr. Kayser, it has just been—I don't think I spent 30 minutes with him in all the time I have known him. He just drops in to say hello and that is about it.

[fol. 1427] Mr. Lishman. But at no time did he discuss such matters as Commission action with respect to construction of facilities or purchase of gas?

Mr. Kline. He has asked us to hurry some cases along, in fact everybody is always asking us to do that and I don't doubt but what he did that.

Mr. Lishman. Did he ever discuss with you the examiner's opinion concerning the authorization of independents selling gas to El Paso?

Mr. Kline. Not to my recollection.

He did come in—well, now I am not certain it was Mr. Kayser or one of his representatives, when they were trying to get gas, to get authorization for the construction of a pipeline from the Aneth Field in Utah down to El Paso's main line, they had a $26 million construction project, and he or his attorneys were in, I don't know whether it was Kayser or not, were in a number of times, trying to get that expedited.

Mr. Lishman. But you never discussed the merits of the case with him?

Mr. Kline. I have never discussed the merits of the case that I recall, with Mr. Kayser."

Page 229:

"Mr. Lishman. On page 8, do you know Mr. George Guy?

Mr. Kline. Yes; I have known Mr. Guy for 45 years.

Mr. Lishman. Does he represent utility companies subject to Commission regulation?

Mr. Kline. He represents El Paso Natural Gas Co. at times.

Mr. Lishman. Yes.

Mr. Kline. I don't know if he still represents them or not.

Mr. Lishman. Is it correct that he called on you six times in 1958?

Mr. Kline. I believe two of those were telephone calls and four were visits to the office.

Mr. Lishman. And in 1959 he called on you five times?

Mr. Kline. I believe there are six telephone calls listed and one visit.

Mr. Lishman. And in January of 1960, he called on you once.

Mr. Kline. That is true.

Mr. Lishman. Do you recall what he discussed with you?

Mr. Kline. Well, I would say a large number of the calls in the case of Mr. Guy were social calls. We

were in school together, we both attended the University of Wyoming, and he was in the general practice there in Cheyenne for many, many years. Now, he has mentioned business on two or three calls but it was generally asking when we would get a decision out, something of that nature."

[fol. 1428] Page 236:

"Mr. Kline. I would have no knowledge at all of why they were missing as they apparently were.

Mr. Lishman. On the dates mentioned do you recall whether or not you had occasion to attend a dinner party given by Mr. Wimberly?

Mr. Kline. Well, now, I don't believe—I believe I testified to attending a dinner party, but I don't believe I testified to attending one at that time. I believe the dinner party I attended was in February.

I think that is when an announcement of his daughter's marriage was made, and I am positive that I didn't attend a party in December. I know it wasn't a dinner party and I don't believe we were over for cocktails or anything during the Christmas season. It is possible we could have been but I don't believe so.

Mr. Lishman. Do you recall any social event you might have attended during those days that have been mentioned, December 26, 27, 28?

Mr. Kline. Yes; that was between Christmas and New Year's, and there is almost always a cocktail party or two somewhere and I am certain I attended some of them.

Mr. Lishman. But you don't recall any special occasion.

Mr. Kline. No; I don't.

Mr. Lishman. Mr. Kline, many of these calls you had were either with former Commissioners or former employees of the Commission, attorneys, and so forth, men apparently versed in the practice before the Commission. Do you know any good reason why they should call on you for matters connected with the

merits where they could have obtained the information probably just as well from members of the staff?

Mr. Kline. Well, now, they probably could have obtained most of this information from the staff, but our staff sometimes does not give what these attorneys feel are satisfactory answers.

Our staff tells them they just can't get to their case, and when the request is made to expedite a case, the staff will often give an answer, "We won't be able to set that down for 2 or 3 months. We have other matters that are pending," and then is when they come to us and ask us to set it down.

Now, I will say this, as to these calls generally, this looks like a great number of calls but when you figure that we are regulating 3,000 or 4,000 independent producers and pipeline companies, and they have thousands of matters pending before us every year, it is only on the exceptional case where they feel their case is being neglected that we get a phone call or request to expedite or request to set the case down.

Now in many of these calls the staff can't take action, such as where they ask to waive the intermediate decision procedure, as where they ask to expedite the time for filing exceptions. There are numerous matters that the staff has no jurisdiction over, and all they can do is send them to us, and I will say this, as to [fol. 1429] these calls, I think that practically every one listed here would be a perfectly legitimate call for a perfectly legitimate business reason. We have to get both sides of a case. On the ordinary case we get a memorandum from the staff which gives their viewpoint.

Now often that is prepared by a man who has never seen an oilfield or never seen a pipeline, and while he does his best a man in the office of Washington sometimes doesn't appreciate the fact that it is vital that a gas well be connected up, and that is why the representatives come to us and point out their position a little more directly . . . "

Pages 282-283:

"Mr. Kline. There were two other trips. When I was in New Orleans in September 1958, I was taken on another inspection tour by boat of the offshore facilities. In that instance, the Phillips Petroleum Co. had a group of people attending the convention that they took out, and I was among them. There was one other trip, I went to the Interstate Oil Compact Commission —I am the Commission's official representative on that —at Philadelphia, in December of last year, and I was driving up, and Mr. Wimberly who attends those conventions also, asked me if I was driving up and he said, 'Well, his wife and he were going, why didn't we go with them' and I went with them in their Chrysler rather than my Chevrolet."

II.

Testimony of Frederick Stueck, Commissioner, Federal Power Commission

Pages 416-417:

"Mr. Lishman. Turning to page 11, is it correct that on April 20, 1959, you had a visit with Mr. Harrington Wimberly?

Mr. Stueck. Yes, sir.

Mr. Lishman. Will—is Mr. Wimberly a former Commissioner?

Mr. Stueck. Yes, sir.

Mr. Lishman. Is it correct that at one time he represented Pacific Northwest Pipeline?

Mr. Stueck. Yes, sir; I think he still does.

Mr. Lishman. Which was merged into El Paso?

Mr. Stueck. Yes, sir.

Mr. Lishman. Is it correct that at on or about April 20 there were matters pending before the Commission pertaining to the Pacific Northwest Pipeline Co.?

Mr. Stueck. Yes, sir.

Mr. Lishman. And also pertaining to El Paso?

Mr. Stueck. Yes, sir.

Mr. Lishman. And some of those matters are—what you would call in the adjudicatory status?

Mr. Stueck. Yes, sir.

Mr. Lishman. And some of these matters are correctly set forth on page 11?

Mr. Stueck. The minute entries reflected on that page, I have checked, and they are correct.

[fol. 1430] Mr. Lishman. Now, when Mr. Wimberly called on you on April 20, did you discuss any of these matters with him?

Mr. Stueck. No, sir; I have never discussed any litigated matter with Mr. Wimberly.

Mr. Lishman. Do you recall what you did discuss with him?

Mr. Stueck. Mr. Wimberly comes in to pay a social call more or less. Frequently, he may have a new story to tell. Occasionally, the need for expedition, or the need for handling of matters, because of drainage of gas wells, for instance, or something like that, may be mentioned but he has never discussed any litigated pending case.

Mr. Lishman. Well, is it correct that Mr. Wimberly is not an attorney?

Mr. Stueck. He is not an attorney. He is a newspaperman, I think.

Mr. Lishman. In other words, would you consider him to be acting more or less as a public relations man?

Mr. Stueck. Yes, sir.

Mr. Lishman. For a Pacific Northwest and El Paso?

Mr. Stueck. Yes, sir.

Mr. Lishman. Would the kind of discussions you have with him been in that area rather than in the area of adjudicated matters?"

Pages 427-428:

"Mr. Lishman. Toward the end of December 1959, did you attend a dinner party given by Mr. Wimberly?

Mr. Stueck. It has been said December. My recollection is that the evening gathering at Mr. Wimberly's home to announce the coming marriage of his

daughter was on the 13th or 14th of February. It was around Valentine's Day.

Mr. Lishman. Were all the Commissioners present?

Mr. Stueck. I cannot say for sure, sir.

Mr. Lishman. Did you have a New Year's party on January 1, 1960?

Mr. Stueck. Yes, sir.

Mr. Lishman. At which Mr. Wimberly was a guest?

Mr. Stueck. It was not a New Year's Day party. My wife makes very excellent French pancakes and that was talked about at some social gathering where we were. We invited the Wimberlys and the Clammers to come over at noontime to my house to have a breakfast and lunch of French pancakes.

Mr. Lishman. Is it correct that at or about that time the Commission had authorized the pipeline construction by El Paso?

Mr. Stueck. I think the authorization was—

Mr. Lishman. January 5, 1960, accordingly to the press release.

Mr. Stueck. Well, El Paso is always constructing and I don't know just what construction that might be. We did not discuss any Commission business at that lunch.

[fol. 1431] Mr. Lishman. Have you ever discussed any Commission business outside of the office with any representative of the companies subject to regulation?

Mr. Stueck. I cannot recall that I did.

Mr. Lishman. Is it correct that on or about December 23, 1959, the Commission approved the merger of El Paso and Pacific Northwest?

Mr. Stueck. Yes, sir.

Mr. Lishman. And did you participate in that decision?

Mr. Stueck. Yes, sir. I voted for the merger because I thought it was in the public interest to do it, and I would recite my reasons if you would care to have them.

Mr. Lishman. Did you have Christmas dinner with Mr. Wimberly?

Mr. Stueck. We went to his house during the holidays, I am not just sure whether it was Christmas Day or not. It was not a Christmas dinner, it was an open house. I think we did go over there on Christmas Day.

Mr. Lishman. You did. Who else was present, do you recall?

Mr. Stueck. I believe that there were, Mr. Wimberly has two daughters, I believe both daughters were present. I think the younger daughter is a nurse at Johns Hopkins in Baltimore and I think she brought some friends down with her.

Mr. Lishman. Were there any other members of the Federal Power Commission present?

Mr. Stueck. I don't believe there were.

III.

The merger proceedings were before the Commission by applications filed on August 7, 1957. The last act of the Commission affecting the merger occurred on February 17, 1960 (Order Denying Petition for Rehearing and Stay).

IV.

California points out that the quick decision here is related to denial of due process. The ex parte communications here set forth reveal several instances of one-sided attempts to persuade the Commission to expedite cases. [fol. 1432] California asserts that the continuity of social and business contacts presented by this record, upon a one-sided basis, violated the ethical norm this agency has adopted for itself.

Respectfully submitted,

William M. Bennett, Special Counsel for the State of California, State Building, San Francisco 2, California.

Dated: January 30, 1961.

[fol. 1433] Certificate of Service (omitted in printing).

[fol. 1437] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1438]

[Stamp—United States Court of Appeals for the District of Columbia Circuit—Filed Mar. 30, 1961—Joseph W. Stewart, Clerk]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15687

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent,
EL PASO NATURAL GAS COMPANY, Intervenor.

On Petition for Review of Orders
of the Federal Power Commission

Decided March 30, 1961

Mr. William M. Bennett for petitioner.

Mr. Arthur H. Fribourg, Attorney, Federal Power Commission, with whom Mr. John C. Mason, General Counsel, Federal Power Commission, Mr. Howard E. Wahrenbrock, Solicitor, Federal Power Commission, and Mr. Robert L. Russell, Assistant General Counsel, Federal Power Commission, were on the brief, for respondent.

Messrs. Charles V. Shannon and Arthur H. Dean, with whom Mr. Stanley M. Morley was on the brief, for intervenor.

Mr. Richard A. Solomon, Attorney, Department of Justice, with whom Mr. George D. Reycraft, Attorney, Department of Justice, was on the brief, for the United States of America, as *amicus curiae*.

[fol. 1439] Before Mr. Justice Burton, retired,* and Prettyman and Fahy, Circuit Judges.

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* Sitting by designation pursuant to Sec. 294(a), Title 28, U. S. Code.

PRETTYMAN, Circuit Judge: This is a petition by the State of California to review an order of the Federal Power Commission[1] authorizing El Paso Natural Gas Company (hereinafter referred to as "El Paso") to acquire and operate the facilities of Pacific Northwest Pipeline Corporation (hereafter called "Pacific") by a merger of the two corporations.

El Paso was organized as a natural gas company in 1928, and its principal business today is the transportation and sale of natural gas. Its chief sources of gas are in the Panhandle and Permian Basin fields of west Texas and the San Juan Basin in northwestern New Mexico; and it also obtains gas from Canada and through agreements with other pipeline companies. The company operates some 8,000 miles of main transmission lines, which extend in two parallel systems from western Texas, across New Mexico and Arizona to the California border. Expansion of El Paso's operations to California began in 1946, and the company's business expanded greatly in the following decade. Although it has many customers along its pipeline routes in Texas, New Mexico, and Arizona, the great bulk of its certificated capacity—2.1 million of a total of 2.7 million Mcf per day—is devoted to sales made at the Arizona-California border to three California distribution companies. It has no pipelines or facilities within California. At the time this litigation was initiated El Paso was the sole out-of-state supplier of natural gas to California, and it provided well over half of the state's total supply.

[fol. 1440] Pacific was incorporated in 1949 and was certificated in 1954 to serve the Pacific Northwest region, the only large area of the country not then served with natural gas. Construction of its system was completed in 1956, and at the time of the merger it owned more than 2,000 miles of pipelines extending from the Canadian border through Washington, Oregon, Idaho, Wyoming, Utah and Colorado. It obtains its gas supplies in the San Juan Basin, in several smaller fields in the Rocky Mountain area, and from Canada. Pacific is authorized to sell gas

[1] 22 F.P.C. 1091 (Dec. 23, 1959). The petition herein also seeks review of an order denying rehearing and a stay, 23 F.P.C. 350 (Feb. 17, 1960).

in all the states through which its lines extend, and it has a system capacity of about 646,000 Mcf per day. In 1958 its sales averaged about 500,000 Mcf per day.

In December, 1954, shortly after Pacific had been certificated, Pacific and El Paso entered into an agreement whereby the latter was to purchase 250,000 Mcf per day of Canadian gas from Pacific. Simultaneously, Pacific contracted with Westcoast Transmission Company, Ltd., a Canadian gas company, to purchase 300,000 Mcf per day. The El Paso-Pacific contract was subsequently modified to provide for the purchase by El Paso of up to 100,000 Mcf per day of this Canadian gas. El Paso's president testified that it was at the time of these negotiations that his company first became interested in acquiring Pacific. Such an acquisition, he said, would provide El Paso with direct access to extensive undeveloped reserves of dry gas in Canada and the Rocky Mountain area and would give Pacific needed additional markets for its gas.

During the early part of 1955 the two companies discussed the possibility of a merger, but the talks broke down after a disagreement as to the method of merger. El Paso insisted that the merger be carried out in such a way as to require the approval of the Federal Power Commission under Section 7(c) of the National Gas Act, that is, a merger of the assets of the two corporations. Pacific, which was then involved in financing and constructing pipelines, wanted to avoid extended proceedings [fol. 1441] before the Commission, and it insisted that the merger be accomplished by an exchange of stock.[2] In fur-

[2] It is clear that at least one of the reasons El Paso desired an asset merger was its belief that a Commission-approved acquisition of properties was less susceptible to attack under the antitrust laws than was a stock acquisition. El Paso's president testified that when merger was first considered by them they requested an opinion from their counsel on the antitrust implications of such a transaction. The following colloquy took place later in the proceedings:

> ["Q. By F.P.C. Staff Counsel.] And at the time were you concerned with the possibility of the Justice Department objecting? [A.] Well, we wanted to do it that way, irrespective of the Justice Department, but it was perfectly apparent that from the standpoint of avoiding any possibility of trouble that was a better way to do it."

ther negotiations El Paso proposed a stock exchange to be followed by an asset merger, but this was rejected by Pacific because of a disagreement on price and also because of its continued reluctance to go before the Commission. Talks resumed in August, 1956, and on November 8, 1956, the companies signed an agreement for the exchange of stock. By May 1, 1957, El Paso had acquired 99.8 per cent of Pacific's stock.

On July 22, 1957, the Attorney General of the United States filed a civil action in the United States District Court for the District of Utah, attacking the stock acquisition as a violation of Section 7 of the Clayton Act. On August 7, 1957, the companies filed applications for approval of a merger of their assets.[3] This step had been authorized by their respective boards of directors on the preceding July 16th and was, by El Paso's own admission, "considerably stimulated" by the imminence of the [fol. 1442] Clayton Act suit.[4] The Commission refused a request by the Justice Department to suspend proceedings on the applications until the District Court decided the antitrust case, and it scheduled hearings for September 17, 1958. The Antitrust Division of the Justice Department was invited by the Commission to participate, but it declined. On October 13, 1958, the District Court in Utah granted a continuance pending final determination by the Commission of the applications before it.

The merger was approved by the Presiding Examiner on November 20, 1959. Exceptions were filed by California, and on December 23, 1959, the Commission affirmed the

[3] These took the form of an application by Pacific under Section 7(b) of the Act for permission to abandon facilities and services and an application by El Paso under Section 7(c) for a certificate approving acquisition of Pacific's facilities.

[4] In both the November 8, 1956, stock exchange agreement and a proxy statement sent out to its shareholders shortly thereafter, El Paso represented that it had no present intention to merge the two companies or to acquire the assets of Pacific. According to testimony at the hearing these representations were made at the request of Pacific after the Internal Revenue Service had indicated that it would require such statements before ruling that the exchange would be tax-free to Pacific stockholders.

Examiner's decision. A certificate was issued to El Paso,[5] and the merger was consummated on December 31st. After the asset merger the United States amended its Clayton Act complaint to include this merger as well as the stock acquisition.

Throughout these proceedings the State of California has taken the position that it should not be wholly dependent on a single company for its out-of-state gas supplies. It seeks the benefits of competition among suppliers and argues that the merger, if upheld, will eliminate a potential competitor to El Paso.

The principal contentions of California may be distilled [fol. 1443] into three: (1) The Commission did not give sufficient or proper attention to the impact of the merger upon future rates to customers; (2) the Commission failed to give proper attention and effect to the policies and terms of the antitrust laws; and (3) California was denied due process, in that the Examiner failed to examine documents filed in evidence. In the second contention it is supported by the United States as *amicus curiae*. Petitioner also attacks the conclusions of the Commission concerning various features of the proposed merger in respect to the public convenience and necessity. We have examined these latter points, the supporting evidence, and the findings and conclusions of the Commission. It is sufficient to say that decisions on such questions lie largely within the expert judgment of the Commission, and we find the conclusions reached in this case to be well within that area. We turn, then, to the principal contentions, as above stated.

Petitioner summarizes its contentions in respect to the rate inquiry as follows:

> "By precluding inquiry into economic impact and denying examination upon future rate structure the Commission denied due process to California; created a record devoid of evidence upon an indispensable item

[5] Pacific's application to abandon, see note 3, *supra*, was denied, on the ground that no abandonment of service would actually occur. Instead, Pacific's certificates were rescinded and identical certificates were issued to El Paso.

of proof, to wit, public convenience and necessity measured in terms of the cost of merger to the consuming public; authorized a merger as being in the public interest with no inquiry of its cost impact to the public."

Petitioner makes clear in its argument that it contends there was a burden of proof upon El Paso, the applicant, to present evidence as to specific future rates after the proposed merger, and that the Commission erred in refusing to go into that subject. The Examiner ruled clearly and succinctly on the matter. He said:

> "It seems to me there can be no aggrievement when there is no dollar impact at the present time on the [fol. 1444] consumer. It is merely a question of determining the public interest, and you must have some general idea whether it is going to be an [exploitation] of the customer—I realize all that. That is what the purpose of the certificate proceeding is.
>
> "But when you get down to dollar impact, it does not come about until the rates are changed.
>
> • • • • • • •
>
> "Well, unless I am directed to do so by order of the Commission, I am not going to make a rate case out of this—whether they are lawful under Section 4(a) or 4(b), whatever it is, of the Act. I am not going to do it unless directed to do it."

The Commission agreed with the Examiner.

We think the Examiner ruled correctly on the point and the Commission was correct in sustaining him. Increases in rates must under the scheme of the statute be proposed by the utility company. The Commission then, under either Section 4(e) or Section 5(a) of the statute, can determine the lawfulness of the proposals. No contention is made that the existing rates of the companies are unreasonable. No increases were proposed in connection with this merger, and a specific provision was inserted in the order that none should be proposed for a year after the merger. Schedules of rates are complicated affairs, involving classifications of customers and services,

with underlying considerations of allocable costs. In the absence of any proposals for increases, a rate inquiry as to possible future requests would be entirely speculative. The Examiner correctly said, we think, that the "dollar impact" of the merger would have to await a rate inquiry. Of course such a future inquiry would involve consideration of costs, and the Commission was concerned lest the costs of the two systems be mingled after the merger in such fashion that the higher costs of one merged company might be imposed in part upon the former customers of the other company. California vigorously insisted that the cost of service would continue to be high for gas orig- [fol. 1445] inating on the Pacific system and that the cost differential would at a future date be imposed on El Paso's customers in California. To make sure it would be able to deal with that problem should it arise, the Commission provided that the costs of the two merged companies should be kept separately.

Under our regulatory system, rates depend in large part on costs. If a merger must inevitably result in higher costs, this is a critical factor to be weighed in determining the public interest in the merger. Of course, if the merger creates new benefits for consumers, higher costs may be justified to some extent. Allocations of costs as between the two underlying systems may be an eventual factor in a rate case. The Commission protected that eventuality. The forecasts of both the Examiner and the Commission in the case at bar were that costs would be lessened in the long run. For example, the record shows that about one-half of the gas marketed by El Paso is residue gas, that is, gas produced as an adjunct to the production of oil. The average life of an oil well is relatively short; and, because the amortization period of the company's capital debt is related to the life of its reserves, El Paso has had a high amortization rate on its bonds, and consequently high financing costs. By the attachment of Pacific's extensive reserves of "dry" gas, that is, gas produced from gas wells, the life of El Paso's reserves will be increased and the cost of future financing will be correspondingly reduced. In addition, there is ample support in the record for the conclusions that substantial savings in total operating expenses

and lower unit cost of transportation will be realized as a result of the merger. In sum, we think an inquiry into specific future rates was not required. Inquiry into the effects of the merger upon future costs, and thus perhaps ultimately upon future rates, was one of the factors to be weighed in evaluating the public interest in the merger. The Commission made such an evaluation, and we think [fol. 1446] it is sufficiently supported. We are of opinion that the contention of California on this point cannot be sustained.

Petitioner and the United States as *amicus curiae* contend that the Commission based its approval in part upon the erroneous thought that its approval of the proposed asset acquisition would immunize that transaction from liability under Section 7 of the Clayton Act; and that the Commission, in applying the standard of public interest, failed to give adequate consideration to the charges of illegality under the Clayton Act.

Section 7 of the Clayton Act contains, in pertinent part, the following as its last sentence:

> "Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the * * * Federal Power Commission * * * under any statutory provision vesting such power in such Commission * * *."

The question whether a transaction duly approved by the Commission, acting within its statutory authority, is or is not thereafter subject to the antitrust laws is not before us. The Commission has no authority to pass upon that question, and it has not purported to do so here. Its function is to approve—or not to approve—a proposed transaction. What status its conclusion may have in other areas or what happens thereafter to the transaction is not for the Commission to determine. The Commission has ample power to approve—or disapprove—the acquisition by one natural gas company of the assets of another such company. It has approved the one before us. It has no authority to declare the transaction immune from any antitrust law. The immunizing, if any, is done by the statute

itself. The statute is a flat, simple statement, "Nothing contained in this section shall apply", etc. Thus the Congress itself described a boundary to its antitrust enactment. It did not confer upon the Power Commission authority to construe or execute that st tute. It left that construc-[fol. 1447] tion and execution to those authorities having to do with enforcement of the Clayton Act. But, we must caution in that regard, the Congress did put the approval of certain transactions in certain fields in the hands of a specified agency. It put approval of gas facility acquisitions in the hands of the Power Commission. It did not put that power in the hands of other authorities. This was a distribution of enforcement power among enforcement authorities, and the lines of the distribution must be recognized and respected.

This brings us directly to the second phase of the argument on the point. This argument is (a) that the Commission, in considering whether to approve a transaction, must give heed to the policies and provisions of the antitrust laws, and (b) that it did not sufficiently do so in this case. We agree with (a) and disagree with (b).

To approve a transaction the Commission must find it to be in the public interest. Clearly, the public interest includes the solution of problems in so important an area of economics and law as the so-called antitrust area. The Commission must consider the public policy, as declared by the Congress, in these respects. But here again a caution is in order. We are here dealing with the interweaving of free competition, regulated monopoly, and the public interest. Free competition is a basic postulate of our free enterprise system, but it is not always—in all conditions—in the public interest; sometimes regulated monopoly, or a measure of controlled monopoly, is in the public interest. The policy of the antitrust laws is to foster free competition. The policy of regulatory measures such as the Natural Gas Act is public regulation of controlled monopoly, or partial monopoly. Thus, in the fields of merchandising and manufacturing, the law prohibits interference with competitors or competition and requires full and free play to rivalries in the marketplace. The resultant constrictions upon prices and practices are deemed to be in the public

interest. But, in the field of public utilities, monopoly, [fol. 1448] or partial monopoly, under public regulation is deemed to be in the public interest. Public utilities are treated as public services. The principal requirement is service, and service is not a necessary result of a competition bent on mutual destruction. Thus, for example, the public interest may require only one air carrier, or one railroad, between two points, or only one gas pipeline out of a given field or over a given area. Frequently a regulatory agency must determine whether one, two, or more companies should operate at a given place under given circumstances. A determination that only one regulated utility should operate is not in contravention of the antitrust laws. The antitrust laws and the regulatory laws are not in conflict; they are complementary. Both have as their objective the public interest. They deal with different subject matters. They have been entrusted by the Congress to different enforcement agencies. When the Power Commission considers the policies and provisions of the antitrust laws in respect to the transactions of utilities under its jurisdiction, it is not required to—and indeed should not—begin with a general premise that competition is always and under all circumstances in the public interest. Its premise should be that the antitrust laws in certain areas of our economy and the regulatory laws in other areas are supplementary enactments and each must be given full effect in its area, recognizing always its concomitant body of law in the other area. The Commission must recognize the policies of the antitrust laws, but it must also recognize its own responsibilities under its own laws.

This brings us to consider what the Commission had to say in respect to the antitrust laws. The Commission took note of the terms and policy of the Clayton Act and stated its own responsibility under that Act and under the Natural Gas Act. It concluded that the elimination of Pacific as a potential competitor was not significant for two reasons: First, because of Pacific's poor financial [fol. 1449] condition it could not be considered a serious competitor to El Paso in California; and, second, there was in prospect substantial additional competition for El Paso in the expanding California market. Beyond this the

Commission found that the public interest would be served in several respects by the merger: The combined system would be considerably strengthened by the increase in available gas supplies; development of sources and markets would be stimulated; the merged company would be in a stronger financial position; existing gas supplies could be more effectively used to meet emergencies in periods of peak demand; and, finally, cost saving would be realized that would ultimately be reflected in lower rates. Thus the Commission weighed one set of factors against the other. It did take into account the policies of the antitrust law and put them in the scale of factors. We think its course of action was its duty, well within its authority, and was a reasonable process. We find no error.

The United States argues that the Commission should have considered specifically the legality *vel non* of the stock acquisition as such. It stresses admissions on the part of El Paso officials that concern over the antitrust action prompted the asset acquisition. It says the asset transfer takes on the character of the antecedent stock acquisition and is to be judged by standards of the antitrust law. We think the transaction should be viewed realistically in its true and real nature. This was clearly a transaction for the acquisition of facilities and the consequent combination of those facilities into a single system. It was not basically a stock transaction, which, standing alone, is usually an investment venture. This was not considered or treated by the participants as an investment venture; it was a combination of physical facilities. The Commission has authority to approve the acquisition of facilities; the Natural Gas Act does not mention acquisitions of stock. Of course the acquisition of portions of the [fol. 1450] stock of a company is not an acquisition of assets. But it seems to us that the acquisition of all the stock of a company (or, as in this case, 99.8 per cent of the stock), with a consequent transfer of assets from the acquired subsidiary to the acquiring parent, is an acquisition of assets. It is indeed one of the most usual methods of acquiring assets. We think the transaction here involved cannot be split into two separate and independent transactions—one the acquisition of all the stock, over

which transaction the Commission has no authority, and the other a transfer of assets, authority over which would be meaningless in terms of acquisition. So to view the transaction would (1) be unrealistic and (2) destroy the effectiveness of authority of the Commission over combinations of facilities. Congress intended this authority to be real and effective. We think that purpose cannot be thwarted by the simple procedure of first acquiring all the stock and then making an intracompany transfer of assets. It might be said that the Commission could refuse to permit a consolidation of facilities even though they were wholly owned by one company. Such a refusal would be meaningless in terms of ownership and control. Congress spoke of acquisitions, not of mere bookkeeping transfers. We think the acquisition of all the stock, vesting actual ownership, beneficial although not formally legal, in the acquirer, plus the subsequent transfer of the assets, made up the transaction of acquisition of the facilities.

California argues that the Examiner failed to accord it due process, in that he failed to give proper consideration to the record. Upon another occasion, in another proceeding, the Examiner remarked upon the needless volume of the record in this case. He said that, out of some 500 exhibits, between 15 and 25 were dispositive of the issue and there was no occasion to examine any more. He referred to "all this unnecessary work that must be done, all this unnecessary overdoing of the case that must be done [fol. 1451] before we ever determine what the issues are." We think the Examiner's remarks were both apt and appropriate. The inundation of the material with immaterial minutiae is one of the griefs which beset the administrative process. It is well to recognize it.

The order of the Commission will be

Affirmed.

FAHY, Circuit Judge, dissenting: Because of the matter now to be briefly discussed I am not able to agree entirely with the opinion of my Brother Prettyman, with most of which, however, I do agree.

The acquisition by El Paso Natural Gas Company of some 99 per cent of the stock of Pacific Northwest Pipe-

line Corporation led the United States to prepare to file suit against El Paso attacking the acquisition of the stock as a violation of section 7 of the Clayton Act. The suit was later filed in the District Court of the United States for the District of Utah. When the responsible officials of El Paso learned of the plans of the United States to file suit, the corporation, by using the very stock control being questioned by the United States, acquired Pacific Northwest's assets and facilities and then applied to the Commission for approval of this merger under section 7(c) of the Natural Gas Act.[1] The approval of the Commission was given in the order under review.

[fol. 1452] Assuming that the Commission has authority under its statute to immunize an asset merger from the antitrust laws of the United States, particularly section 7 of the Clayton Act, it is my opinion that the order approving the instant merger should not be affirmed. I am of this opinion because if the stock acquisition attacked in the suit filed by the United States is invalid under the antitrust laws the acquisition by El Paso of Pacific Northwest's facilities, constituting the merger which was approved, was contrary to public policy because accomplished by stock control obtained in violation of the antitrust laws. Clearly this would be a relevant consideration in determining whether the merger, though otherwise serving the public convenience and necessity, should be found to do so. If not invalid as contrary to public policy at least such a merger should be reconsidered in event the antitrust suit results favorably to the United States. This is not simply a matter of whether the public convenience and necessity would be served by the merger upon consideration of other relevant factors, including the general policy of the antitrust laws; it is a matter of whether a merger, accomplished by a particular illegal acquisition of stock, can be approved consistently with sound public policy or be said to serve the public convenience and necessity.

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[1] If it is not clear, as I think it is, that the acquisition of the assets of Pacific Northwest by El Paso was a consequence of the action taken by the United States under the antitrust laws, it is certain that the contrary also is not clear, and the truth of the matter should be determined.

For the reasons above stated I agree with the position of the United States as *amicus curiae* that the decision of the Commission should be vacated and the cause remanded with instructions that the Commission either deny the application for approval of the merger or await the outcome of the antitrust litigation.

[fol. 1453] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,687

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent,

EL PASO NATURAL GAS COMPANY, Intervenor.

On Petition for Review of Orders of the Federal Power Commission.

Before: Mr. Justice Burton, retired, and Prettyman and Fahy, Circuit Judges.

JUDGMENT—March 30, 1961

This case came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the Federal Power Commission on review in this case is affirmed.

Per Circuit Judge Prettyman.

Dated: March 30, 1961.

Separate dissenting opinion by Circuit Judge Fahy.

[fol. 1456] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1457]

SUPREME COURT OF THE UNITED STATES

No. 187—October Term, 1961

CALIFORNIA, Petitioner,

vs.

FEDERAL POWER COMMISSION, ET AL.

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.